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Vol. III
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME III.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for
the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC. 17/41.)

The Court:

Do you want this taken down?

Mr. Underwood:

No.

(Legal argument.)

The Court:

I don't think that is proper. If you want it to go into the record now, so you can assign an error on that—

Mr. Underwood:

Yes, I would appreciate, your Honor, if you would take that and give me the right to argue the point at the conclusion of the case.

The Court:

You may move to re-open the argument on that, but I prefer to rule on it now. As far as the purpose of appeal is concerned, you can put it in the record, and then you may argue it later.

Mr. Underwood:

I would like leave to brief the point when the case is briefed and to argue that this must be considered with the rest of the evidence.

The Court:

Well, if you care to do that at the time of the argument, you may do so.

A. He told Mr. Alley that he was sending the Seminole to Palm Beach, for him to take care of it and have Mr. Riley inspect it regularly, and from "now on it was his baby".

Q. Mention has been made of the insurance policy which you arranged for in the early part of 1935. I show you a paper. Can you identify what that is?

A. Yes; this is a copy of the policy.

Q. It came from your files?

A. Yes, sir.

Mr. Underwood:

I offer that.

Mr. Matteson:

I object to that as incompetent, irrelevant and immaterial.

The Court:

What does it show?

Mr. Underwood:

It is the best evidence within our possession or under our control that the boat was insured.

Mr. Botts:

What does that illustrate?

Mr. Underwood:

The fact that the boat was insured?

Mr. Botts:

Yes.

Mr. Underwood:

It illustrates just exactly this: my friends are contending that the Seminole was improperly constructed and equipped in many respects in violation of regulations made by Underwriters and Underwriters' employees; nevertheless they insured this boat, therefore my argu-

ment is that she could not have been so bad as they say she was.

The Court:

Do you rely upon any of this statement here about who the insuree is, do you?

Mr. Underwood:

No. You mean where it says, "H. Phipps, proprietor"?

The Court:

Yes.

Mr. Underwood:

No. I offer it solely for the purpose of proving that the boat was insured by that company at that time, in that amount and so forth, and the details of the policy itself.

Mr. Botts:

If the Court please, does the fact that an insurance company may have, through carelessness or through some other reason, issued an insurance policy,—does that in any way illustrate any reasonable contention that the boat was not defective in condition. It seems to me that such would be a preposterous hypothesis, and the only proper way to prove the boat was proper and safe, if such was the case, is to prove the facts, and then let the Court, with the aid of expert testimony, if necessary, determine that fact, but the fact that a company issues an insurance policy does not illustrate anything with reference to the condition of the boat, and if the boat was unsafe it would only illustrate the fact that some agent of the insurance company was careless.

The Court:

I don't think it is helpful to the Court.

Mr. Underwood:

May I say this, your Honor: this is a leak in the chain. Captain Bernard inspected this boat, and I shall show that that was a basis for the issuance of this policy, that the policy—

The Court:

Do you want this in the record?

Mr. Underwood:

No.

(Legal argument off the record.)

The Court:

I don't think it is proper evidence. The only matter I was considering there is whether Mr. Wright's testimony made it relevant at all.

Mr. Matteson:

Possibly we can mark this for identification at this time.

The Court:

All right; just let it be marked for identification, and I will not make any ruling at this time.

Mr. Botts:

On behalf of the Respondent Pilkington it certainly is not admissible, because Mr. Wright was not our witness.

The Court:

All right; it is refused insofar as Captain Pilkington is concerned.

(Thereupon the document above referred to was marked Respondents' Exhibit 3-Q for identification.)

Mr. Underwood:

In order that the record may be complete, if your Honor please, I will ask the witness one or two questions about this.

The Court:

All right.

(By Mr. Underwood):

Q. You did effect the policy of insurance on the Seminole?

A. I did.

Q. Under the Federal Insurance Company?

A. I did.

Mr. Matteson:

This is taken subject to the objection, I take it?

The Court:

Yes.

Mr. Underwood:

Can I not prove that the boat was insured?

Mr. Botts:

I don't see how it is relevant.

The Court:

I do not see that the last two questions and answers are proper. I think the ruling will be the same as it was in regard to exhibits insofar as it was offered for identification.

(By Mr. Underwood):

Q. Mr. Hawkins, yesterday you testified something to the effect that Mr. J. S. Phipps took a more lively interest in the Seminole than Mr. H. C. Phipps. I am not at all clear just what that means, and if you have any amplification of that, I would like for you to tell us.

A. I guess the best explanation of it is that it is a question of temperament between the two individuals; neither gave me any specific instructions, but if I would talk to H. C. Phipps about a matter concerning the boat or about company business or anything, he would usually accept my judgment, whereas John S. Phipps wants to know the reason why you make the recommendation.

Q. You spoke of having in mind, in connection with the Seminole, a limit somewhere in the neighborhood of \$500.00 of expense that you would incur on the basis of your general authority without asking for extra authority. How about the Iolanthe which was owned by Mr. John S. Phipps?

A. I would not spend any amount of money on her, maybe five or ten dollars, without his specific approval.

Q. How about the Dorothy, which was owned by Mrs. Guest?

A. I wouldn't spend one red dime without her approval.

Q. I think it was brought out yesterday that in connection with the cruise in the spring of 1935 Mr. John S. Phipps said he wanted to use the boat and you recognized his authority in that respect. Did you also recognize Mr. H. C.'s authority in that respect?

A. When he owned the boat.

Q. When you say "when he owned the boat" do you mean he was a stockholder of the company?

A. Yes, when he was a stockholder of the company.

Q. And when Mr. John S. Phipps said to you that he wanted to use the boat on a cruise in the early part of 1935, did he tell you anything about what the other stockholder was going to do?

A. Yes; he said that he and Mrs. Guest were going together on the boat.

Q. Did you accept that as authority from both stockholders?

A. Yes, sir.

Q. Yesterday you were asked if you would have paid the personal property tax on the Seminole just the same as if the boat had been individually owned, and you answered in the affirmative. I want to ask you whether or not that personal property tax would have been charged just the same, and by that I mean against some person or corporation if it had been individually owned.

A. All charges are made to the person or company that owned the boat; for instance, John S. Phipps owned the Iolanthe and he had a personal property tax.—I did not okay the payment of that tax. On the Seminole I approved it as secretary of the company, after I ascertained that the tax was reasonable and I couldn't get it reduced, and I certainly would not charge John S. Phipps for the tax paid on the Seminole, nor would I charge the Seminole Boat Company for the tax on the Iolanthe or any other boat.

Q. You were asked by Mr. Botts yesterday whether your authority in connection with the purchase of the Prigg boat came from Mr. John S. Phipps, and I believe you answered in the affirmative. I want to ask you whether or not you were advised at that same time about the authority of the other stockholder.

A. He told me that he was going to take Mrs. Guest. You see, there was some indecision there about who was going to buy the boat, whether the company was going to buy the boat or whether he was going to buy the boat.

Q. This is the first conversation with Mr. Phipps?

A. Yes.

Q. On the occasion of the second conversation with Mr. Phipps, as I understand it, you were advised to buy the boat for the company.

A. Yes.

Q. Were you at that time complying with the wishes of the other stockholder, Mrs. Guest?

A. Yes; she said it was all right to go ahead and buy the boat for the company.

Q. You were asked this morning about whether or not you gave instructions to Mr. Riley generally, and I think you answered in the negative, that there were no instructions as a rule but suggestions, and I want to ask you specifically about the Seminole. Did you issue instructions to Mr. Riley about the Seminole?

A. Yes, sir.

Q. I think this morning you also testified that when the books of the Seminole Boat Company were sent to Palm Beach, that that was done at the instance of Mr. Alley?

A. Yes; the letter will show that; it was either Alley or Scott.

Q. Can you refresh your recollection from that letter and tell me which it was?

A. Yes.

Mr. Botts:

As a matter of fact, we do not object to it, but it is not proper for the witness to refresh his memory from a document that he did not produce.

Mr. Underwood:

I think you are wrong about that, Mr. Botts; he can refresh his recollection from the telephone book, if that will refresh his recollection.

Mr. Botts:

All right; if you think that is the law, you can go ahead and do so, but I don't think it is.

A. It was from Mr. Scott. In view of the fact that the Seminole was located at Palm Beach Mr. Scott decided it would be an advantage to have the books kept there.

Q. Now it was brought out this morning that the Minute Book contains no record of any authority from the Board of Directors of the Seminole Boat Company to borrow money from the Boulevard Mortgage Company or to have the Boulevard Mortgage Company or to have the Boulevard Mortgage Company make payments on account of the Seminole Boat Company. Will you tell me whether or not that question was discussed among the directors before that was done?

Mr. Matteson:

If your Honor please, we have here a long string of leading questions. I think the minutes, as far as that is concerned, speak for themselves. I do not think there is any explanation required of them.

The Court:

The question is whether it was or was not discussed. I think he is entitled to answer that.

A. Yes, it was discussed.

Q. Now, Mr. Hawkins, will you tell me whether or not the directors authorized that procedure?

A. Yes.

Mr. Matteson:

If your Honor please, I object to that; it is obvious that the way directors of a corporation authorize any procedure is by formal action which is properly recorded.

(Legal argument off the record.)

The Court:

The objection is sustained.

(By Mr. Underwood):

Q. Mr. Hawkins, did either of the stockholders of the Seminole Boat Company at the time of the beginning, Mr. J. S. Phipps and Mr. H. C. Phipps, ever instruct you to have the bills paid by the Boulevard Mortgage Company?

A. No, sir.

Mr. Underwood:

Now, if your Honor please, I would like to rise to a point of information. I am not advised by the pleadings as to my opponents' position in this case, and even after many, many months since we first met down here and argued some interrogatories. Mr. Botts has just made the assertion that the Seminole Boat Company was a sham, as I understand him, and that it is not and was not a legal entity.

Mr. Botts:

I did not say that.

Mr. Underwood:

That is what I understood. Is it the contention of my adversaries that the Seminole Boat Company was a corporation or was a sham and not a legal entity?

Mr. Botts:

Both, exactly. If you will study the law with reference to sham corporations, you will see that that answer is quite logical.

Mr. Underwood:

You contend that it was a corporation and it was a sham?

Mr. Botts:

I contend that it was in fact a corporation, and for legitimate purposes might be treated as such, but that as between John S. Phipps and these libelants and other claimants it was a mere sham and a shell, and should be ignored. I will say it was for proper and legitimate purposes recognized as a legal entity, but for improper purposes, such as in the present instance, it should be ignored. That is my position.

Mr. Underwood:

May I ask whether the Libelants join in that position?

Mr. Matteson:

If your Honor please, it seems that we are premature here; I don't see what particular purpose is served by discussing this question now. It is one of the things to be argued on the evidence at the conclusion of the case.

The Court:

Do you want this on the record?

Mr. Matteson:

Not necessarily.

(Legal discussion off the record.)

Mr. Underwood:

The purpose of the question is really to amplify the pleadings. I might have perhaps made a motion in advance of the trial to clarify the pleadings, something we rarely do in Admiralty. Mr. Botts' statement seems to be a departure from the pleadings. (Perhaps it is not), and that is what led me to propound the question. I do think it is only fair that I should know my opponents' position at least at the time I began my case. They must have a position by this time.

Mr. Botts:

I have told you mine.

The Court:

I think we had better go on with the evidence. I do not see that anything can be accomplished by a discussion of this kind at this time.

(By Mr. Underwood):

Q. One further thing: something was brought out this morning about your causing certain entries to be made in the books of the Seminole Boat Company on instructions from Mr. Weiss in New York.

A. Yes.

Q. I am not clear whether those were charges against the Seminole Boat Company or credits to the Seminole Boat Company. Will you tell me which they were?

A. Credits to the Seminole Boat Company.

Mr. Underwood:

I think that is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Hawkins, I would just like to ask you about this book, for instance, this voucher Number 52 which we discussed this morning. This is a record of a charge against the Seminole Boat Company on the Seminole Boat Company's books?

A. That is correct.

Q. And that is based on a statement which comes from the auditors' office in New York, is it not?

A. That is right.

Q. Now the point you make is that that was before the time of Mr. Weiss and the time of his predecessor?

A. No; he asked me the question what instructions I had from Mr. Weiss, and that was to credit the account of Seminole Boat Company, and that is what I did.

Q. Mr. Weiss is the present auditor in New York.

A. Yes.

Q. How long has he been there?

A. I think he has been the active head about two years.

Q. Before that who was the auditor?

A. Mr. Fowler.

Q. Did this charge come from Mr. Fowler?

A. I don't know anything about that charge. The correspondence was had with the bookkeeper.

Q. You have received statements of charges from the auditor in New York?

A. Yes.

Q. Whether it was from Mr. Weiss or somebody else?

A. I don't know whether there was any charges from New York to the Seminole Boat Company, or whether they were all credits.

Q. You don't know?

A. The books would reflect that.

Mr. Matteson:

That is all.

Mr. Underwood:

That is all.

(Witness excused.)

1790 Thereupon PAUL R. SCOTT was produced as a witness in behalf of the Respondent Phipps, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your name is Paul R. Scott?

A. Yes.

Q. You are the president of Seminole Boat Company?

A. I am.

Q. A member of the bar here?

A. I am.

Q. When did you first become associated with the Phipps interests in Miami?

A. About January 1st of 1926.

Q. And there came a time when you were in charge of the Miami office?

A. Yes, sir.

Q. And when did you relinquish your local residence and your charge of the Miami office?

A. In 1936.

Q. Prior to that time was there a period when you were here part of the time and not here part of the time?

A. Yes.

Q. When did that begin?

A. The summer of 1932.

Q. And from that time on what was the situation?

A. I spent considerable periods of time in the north in the years 1932, 1933, 1934 and 1935, and the rest of the time I spent here.

Q. In your absence who was in charge of the Miami office?

A. Mr. Hawkins.

Q. Do you remember Captain Nelson who was at one time captain of the Seminole?

A. I do.

Q. Do you remember when he left that position?

A. In the summer of 1928; I think, in July.

Q. Prior to his departure from the Seminole who was it that gave him orders and made the decisions about what was to be done on her?

A. The owners gave them to Nelson.

Q. When was the Seminole Boat Company incorporated; in the fall of 1928?

A. In the fall of 1928, yes.

Q. What did you have to do with the origin of that corporation?

A. After I discharged Nelson I talked to various charter boatmen that I knew here about the feasibility of chartering the Seminole, and I discussed it with the owners, and they were willing to operate the Seminole as a charter boat but did not wish to go into the charter boat business themselves, and it was decided to incorporate a company and sell the Seminole to this company, and that was done.

Q. You have been president and director of the Seminole Boat Company from the beginning down to the present time?

A. I have.

Q. From the time of Captain Nelson's discharge until the formation of the corporation what did you have to do with the operation and management of the Seminole?

A. I was responsible for it.

Q. Did you have anyone in your office who attended to the details?

A. I turned it over to Mr. A. A. Simon who was in our office and who acted as purchasing agent for the company.

Q. During that interval from whom did Mr. Simon get his instructions?

A. From me.

Q. Following the formation of the corporation who was in charge of the management and control of the Seminole?

A. The directors of the Seminole—

Q. Who made the normal decisions in her operation?

A. To begin with I did, and then before very long I delegated Mr. Hawkins to have direct charge.

Q. From that time on who has made the decisions as to the management and operation of the Seminole?

Mr. Botts:

That is objected to as calling for the conclusion of the witness, and it is not the best evidence. He can state what he did.

The Court:

I think you can develop that on cross-examination. I will overrule the objection.

Q. In April, 1931, did you issue any instructions to change that situation?

A. I sent the boat to Fort Lauderdale and directed Mr. Alley to take direct charge and instructed him to have Mr. J. F. Riley make regular inspections of the boat while she was in storage.

Q. It has been brought out, Mr. Scott, that the Seminole Boat Company's bank account was closed out, I believe, in 1931. Will you tell us whether or not you decided on that course?

A. I decided it after discussion with Mr. Hawkins and Mr. Alley. We had a large number of bank accounts and unless we kept certain balances we would have to pay service charges, so we closed out all balances except those that were very active and paid the bills of those less active companies through the Boulevard Mortgage Company.

Q. Since the time of the formation of the corporation has Mr. John S. Phipps given you any instructions as to the maintenance and upkeep of the Seminole?

A. No, sir.

Mr. Botts:

If the Court please, practically every question that he asks this witness is a leading question. I realize that when the trial is before the Court that that is not as pernicious as it is before a jury, but I think that counsel might let the witness do a little of the testifying, and I object to these leading questions.

Mr. Underwood:

I still remember the very forceful remark that Mr. Botts made in March to the effect that the law of Florida is that a question is not leading just because it can be answered yes or no.

Mr. Botts:

And that is the law everywhere.

Mr. Underwood:

True, and this is that kind of a question, I thought.

Mr. Botts:

Maybe it is.

Q. Mr. Scott, are you familiar with the corporate set-up of the several companies that the Phipps family are interested in?

A. I am.

Q. I show you three charts. Were these made up under your direction and supervision?

A. They were.

Q. Can you tell me whether they accurately reflect the ownership of the various companies thereon named during the periods of time indicated thereon?

A. They do with this one comment; on the third chart which covers the period from 1932 to 1936, it shows John S. Phipps and Henry C. Phipps as the owners of the stock of the Seminole Boat Company, which was true in 1932, but in 1936 Henry C. Phipps transferred his stock to Mrs. Guest; otherwise they are correct.

Q. These lines thereon, do they indicate the ownership of all the stock except where otherwise indicated?

A. Yes, sir.

Q. I call your attention to the first chart, from 1924 to 1930: Boca Raton Company—designated by the initials D. T. L., Jr. and H. C. Martholomew. Does that mean that those persons also owned stock in the company?

A. Yes.

Q. Where such other lines appear, for instance, Ocean Island Corporation—the persons whose names appear in the box also own stock, is that correct?

A. That is true.

Mr. Underwood:

I offer these in evidence.

Mr. Botts:

I don't think, under the testimony, that they are admissible, and it may be that we won't object to them at all, and I am going to suggest that they be filed subject to our objection later; your Honor, should we want to interpose objections, and in that way we can make some progress.

The Court:

They are admitted subject to being moved against hereafter.

Mr. Underwood:

Perhaps I should ask one further question at this stage.

The Court:

All right.

Q. Are you familiar, Mr. Scott, with the stock ownership of these companies during the periods in question?

A. Yes.

Q. Do you know who owns the stock?

A. Yes.

(Thereupon the charts above referred to were marked Respondents' Exhibits 3R-1, 3R2 and 3R-3, respectively.)

Mr. Botts:

Suppose, for the purpose of the record, I ask Mr. Scott a question or two about these tabulations, if you don't mind.

Mr. Underwood:

I am almost through, Mr. Botts. Will you restrain yourself?

Mr. Botts:

On that particular point I was going to ask him some questions as to his actual knowledge about these.

Mr. Underwood:

All right, go ahead.

(By Mr. Botts):

Q. These documents were prepared by accountants acting under your direction, were they?

A. Yes.

Q. You are personally sufficiently familiar with the actual stock set-up of these various corporations to know that the set-up as indicated by those charts are correct or substantially so, without having in mind the actual details; is that correct?

A. Yes, sir.

Q. And from your knowledge of these and your examination of them you believe that they do correctly set up the stock situation?

A. Yes, I do.

Q. And it was your instructions to these men to prepare them so that they would correctly reflect the stock set-up?

A. It was.

(By Mr. Underwood):

Q. On Exhibit 3-R-3 I notice a reference by asterisks in the box for Potomac Corporation a legend which relates to a trust or several trusts. Will you tell me whether or not from the time that speaks of, June, 1932, Mr. John S. Phipps owned any beneficial interest in the stock of the Potomac Corporation?

(Legal discussion.)

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Scott, I understand that Mr. Simmon's connection with the Yacht Seminole was during the period before the incorporation; is that right?

A. Well he continued to do things in connection with the Seminole after the incorporation, and as long as he was up there in the office.

Q. Well he had of course no connection with the Seminole Boat Company other than the fact that you asked him to do certain things?

A. He had no official title.

Q. And he was in the employ of the Biscayne Boulevard Company, was it, then?

A. Yes, sir.

Q. And no part of his pay or salary was charged in to the Seminole Boat Company, was it?

A. None.

Q. I understand that you had charge of this boat for the owners before the incorporation?

A. After Nelson was discharged.

Q. And it was you that discharged Nelson, I understood?

A. Yes, sir.

Q. I think you probably heard this morning Mr. Hawkins' testimony with respect to his position as head of the Miami office; that he was continually at the service of and called upon frequently to perform various personal services for the members of the Phipps family?

A. Yes.

Q. And I take it that his testimony in that respect corresponds to the situation that existed when you were head of the Miami office?

A. Yes, sir.

Q. Was it your understanding that Mr. H. C. Phipps had an interest in this Boat Seminole from the beginning of the ownership by any member of the Phipps family?

A. That has always been my understanding.

Q. As a matter of fact did you yourself arrange for the certificate of enrollment and license for the Boat Seminole—did you not?

A. Yes, sir.

Q. Now referring to a certificate of enrollment and yacht license dated February 16th; you are aware of the fact, are you not, that the Seminole up to the time of the certificate which was issued on February 16, 1929, was registered in the name of John S. Phipps as sole owner?

A. Yes, sir.

Q. I understand the bank account of the Seminole Boat Company was closed because it was so inactive; is that right?

A. Yes, sir.

Mr. Matteson:

No further questions.

(Witness excused.)

1798 MR. R. A. ALLEY was recalled and further testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Alley, you are a member of the bar of this Court?

A. Yes, sir.

Q. When were you first associated with the Phipps interests in Miami?

A. On August the first 1925, I became associated with companies of which the Phipps interests were creditors. That was my first connection.

Q. And were you connected with them here for some time?

A. Yes; until November 20, 1927.

Q. During that interval, did you have anything to do with the Seminole?

A. Nothing at all, sir.

Q. In November 1927 you went to Palm Beach?

A. Yes, sir.

Q. And did you then become manager of the Palm Beach Company?

A. Yes, sir; Palm Beach office, I would say.

Q. Palm Beach office, of the Palm Beach Company?

A. That is right.

Q. And from that time on, how long did you remain such?

A. Until about the first of June 1935.

Q. What happened then?

A. I opened up a law office in West Palm Beach.

Q. Did you retain any connection with the Palm Beach Company?

A. I did.

Q. What was it?

A. I continued to act as legal counsel, and performed administrative duties in connection with the business in Palm Beach County.

Q. From the beginning you have been vice president and one of the three directors of the Seminole Boat Company?

A. Yes, sir.

Q. From the time of the incorporation of that company?

A. That is correct.

Q. Down to date?

A. That is correct.

Q. In a general way what is the business of the Palm Beach Company?

A. It holds and operates real estate,—both unimproved and improved real estate in Palm Beach and adjoining areas.

Q. When you began your association with the Palm Beach Company was Mr. Riley there?

A. He was.

Q. What was the nature of his work at that time?

A. Mr. Riley was what I guess you would call an outside man. He took care of the physical properties of the company and other companies managed by the same office, and of the personal estate of individual members of the family.

Q. Did his status change?

A. Yes, as time went on he took more hand in the internal business affairs of the company and when I left the office why he took charge.

Q. What was his status or position in the office before you left?

A. He was, I suppose, my first assistant.

Q. Was he substantially assistant manager there?

A. Yes.

Q. Of the office?

A. Yes.

Q. How long had he done that?

A. Well, it was a process of gradual evolution; there was no distinct time on which I could say that he did that. Probably there about 1929 I should say.

Q. When did you first begin to have anything to do with the active management or control of the Seminole?

A. Actively?

Q. I mean, apart from your position as director and vice president.

A. Yes, sir, from the late spring, I would say, I think it was in April, 1931, on, whenever the boat would be on the waters adjacent to Palm Beach, particularly if she was at Ft. Lauderdale.

Q. Did you receive, about that time, any instructions from the president of the corporation?

A. I did. I received instructions from Mr. Scott.

Q. What were those instructions?

A. That he was sending the Seminole to Ft. Lauderdale, and for me and the office to take over the charge,— physical custody and control of the boat. He suggested that I turn that over to Mr. Riley, who was as I said,— his duties were the management of the physical properties; and I did that immediately.

Q. Did you issue any instructions to Mr. Riley?

A. I told Mr. Riley to take over control and management of the Seminole and to inspect her regularly while she was at Ft. Lauderdale.

Q. That you say was about April, 1931?

A. Yes, sir.

Q. Were those instructions ever countermanded?

A. No, they were not.

Q. From that time on who was it that made the routine decisions as to maintenance and upkeep of the Seminole while she was in your bailiwick?

A. Mr. Riley would make them; he would confer with me at times; he made them in the ordinary course.

Q. Did Mr. John S. Phipps have a secretary at Palm Beach?

A. No, sir.

Q. Did Mr. Riley have a secretary?

A. No, sir.

Q. Mr. Riley was paid by whom?

A. He was paid by the company, Palm Beach Company. He was paid directly by me up until just before I opened up my own office,—I think about two months before; when I was aware that I was going to make a change, I made other arrangements, and Mr. Hawkins paid him from that time on. That is, I say he was paid directly by me. All of the salaries were paid by the company, by one large check of sufficient size to include all salaries of the company except my own; which I deposited in the paymaster account of my own, and I paid the salaries for the employes, the office employes.

Q. You were in effect the pay master of the Palm Beach Company's Palm Beach office?

A. That is right.

Q. Something has been said here this afternoon or this morning, about two small expenditures, I think of \$10.00 each, in connection with bonds for the estate of R. C. Abel. Do you know what those were?

A. I do.

Q. Will you tell us?

A. They were premiums on the bond that Mrs. Abel had to file in the Probate Court of Palm Beach County, and she became administratrix of Abel's estate. I think it was one original premium and one renewal.

Q. When disbursements were made in connection with the Seminole at Palm Beach, after April, 1931, who paid the bills?

A. The Palm Beach Company.

Q. And were the books of that company in that office kept under your general supervision?

A. Not at first; they weren't kept there until the first of 1934,—you say the books of the Seminole Boat Company?

Q. Books of the Palm Beach Company, in the Palm Beach office.

A. I misunderstood you; I was anticipating.

Q. Perhaps I did use the wrong company.

A. There were books kept there; they were not the actual final books of account of the Palm Beach Company.

Q. Where are those books kept, in the north?

A. They are kept in the north, yes, sir; Jersey City, I believe; I am sure they were kept at number 17 Exchange Place, Jersey City.

Q. Will you tell me whether or not the Palm Beach Company paid the bills of any other companies during that period?

●A. Many.

Q. Individuals?

A. And of individuals, yes, sir. That was a custom that was in effect when I came there,—of long standing.

Q. Was there any charge made for that service?

A. No, sir.

Q. Have you prepared a—

A. Only for a short time, there was a period in which the main members of the family did pay a certain charge, and then it was abandoned.

Q. Do you remember approximately when that was?

A. Oh, it must have been in 1932, see, somewhere along there.

Q. Do you know whether that has been continued prior to the time of this fire?

A. It has.

Q. Many months before?

A. It was found impracticable.

Q. That arrangement was not in effect at the time of this fire?

A. No.

Q. Have you prepared a list of accounts for which the Palm Beach Company made disbursements?

A. Yes, sir.

Q. Is that the list?

A. Yes, this is a list of accounts that we—for which disbursements were made. The first column is the list of accounts and the other column is the name of the person against whom that charge for that account would be made.

Mr. Underwood:

I offer this.

Mr. Botts:

Objection from—

A. May I add, that the matter went farther than this sheet reflects, in some instances. For example there is the item of Boca Raton Company, as stated on here, charged to Boca Raton Company; that company was not owned entirely by members of the Phipps family; it was also owned in part by a man by the name of H. C. Bartholomew.

Q. You mean that the charges incurred in respect to the Boca Raton Company were charged both against Boca Raton Company and Mr. Bartholomew?

A. No, they were charged to the Boca Raton Company, but the interest in Boca Raton Company was divided up as well, and by reason of the fact that part of the stock was held by a person outside of the Phipps family. The same thing is true of Jupiter Island Company; that stock was not held entirely by members of the Phipps family.

Q. How about the Ocean Island Company?

A. Well, that is shown here to be owned half by Mr. Speidel, half by the Palm Beach Company. In addition to these accounts the office handled without making any service charge, or charge, as you wish to call it, a large number of bond accounts for individual members of the Phipps family, municipal bonds,—Florida municipal bonds, which were under my jurisdiction partly.

(The said paper was admitted in evidence and marked Respondents' Exhibit 3-S.)

Q. From the time of your instructions from Mr. Scott, in April, 1931, did Mr. J. S. Phipps ever give you any instructions as to the maintenance or upkeep of the Seminole?

A. No, sir.

Q. Did you ever hear Mr. John S. Phipps give Mr. Riley any instructions as to the maintenance or upkeep of the Seminole?

A. There was one time—I recall that Mr. Riley submitted to him the letter of some fairly extensive repairs on the motors; he submitted them to Mr. J. S. Phipps and Mr. H. C. Phipps; I remember that one instance in which both the stockholders were consulted.

Q. Are those the only instructions you can recall, from stockholders to Mr. Riley?

A. Yes, sir.

Q. On the day of the fire, June 24, 1935, did you have a conversation with Mr. Riley about the hospital expenses of John Thomas?

A. I did.

Q. Did you give him any instructions about that?

A. I told him to go ahead and guarantee the expenses at the hospital.

Q. Did you have any instructions from Mr. John S. Phipps about that?

A. No, I did not.

Q. Or, from the other stockholder, Mrs. Guest?

A. No, I didn't.

Q. Were either Mr. John S. Phipps or Mrs. Guest in Florida at that time?

A. No, they weren't.

Mr. Underwood:

You may cross examine.

Cross Examination:

By Mr. Matteson:

Q. Mr. Alley, you were head of the Palm Beach office for a number of years, and in that capacity you were known as the representative of the Phipps interests in that place?

A. Well, I don't know what I was known as. I had the title of manager of that office.

Q. Well, you heard Mr. Hawkins' description this morning of the various functions that were placed on him as head of the Miami office. He was at the call and service of all members of the Phipps family at frequent intervals.

A. Yes, sir.

Q. I suppose that that condition existed in Palm Beach in respect to the office that you held?

A. That is right; I am afraid it was more so, because members of the family lived there.

Q. The Phipps family have one or more estates in Palm Beach, have they?

A. Yes, sir.

Q. What estates are they, there?

A. Mr. John S. Phipps has his residence there, his brother Mr. H. C. Phipps; his sister, Mrs. Guest. The other brother, Mr. Howard Phipps, has his home at Gulf-stream, which of course is the other way; it also is in Palm Beach County.

Q. And are those fairly large estates?

A. Yes.

Q. And for that reason the calls on your office are fairly onerous in connection with the affairs of the estates; is that true?

A. Considerable work done in connection with the estate, that is true; payrolls for the estates. Each estate however, has its own superintendent.

Q. And your salary was received from the Palm Beach Company, I think you said?

A. I don't really know. For that particular period I received my salary from Mr. Fowler.

Q. And Mr. Fowler was the auditor in the Phipps estate,—or treasurer?

A. He was auditor of the books of the various companies owned by the members of the Phipps family.

Q. Well, there is an organization in New York known as the Henry Phipps estate, isn't there?

A. I understand there is.

Q. I haven't studied this schedule here.

A. May I amplify my answer to one of your questions, Mr. Matteson?

Q. Yes.

A. I am quite sure that my salary was charged to the Palm Beach Company, because I did receive copies of the statements given to the Federal government pertaining to salaries in connection with the income tax laws, in which it was stated that my salary was paid by Palm Beach Company; so I assume that it was.

Q. Mr. Riley worked under you, I think you said that he had a good deal to do with the personal estates of members of the family?

A. That is true.

Q. So I take it that he would visit those estates at frequent intervals?

A. He did.

Q. So that there would be frequent occasions for him to visit the estates of John S. Phipps and Henry C. Phipps, for that matter?

A. That is true.

Q. And he, as you, I suppose would transact considerable personal business for those two members of the family, as well as others?

A. As well as the others; yes, sir.

Q. Mr. Scott, in speaking of his conversation with you with respect to Mr. Riley's connection with the Seminole, I believe said that he told you that Mr. Riley was to make regular inspections of the Seminole. Do you recall that?

A. Yes, sir.

Q. And did you so instruct Mr. Riley?

A. I did. I did, and he did.

Q. You mean he did make inspections?

A. Yes, sir.

Q. Mr. Alley, I think you said that you told Mr. Riley that it would be all right to guarantee the hospital bills of John Thomas. Was that the only thing that you had to do in connection with the payments that have been made to Thomas?

A. No, not entirely.

Q. Well when you authorized him with respect to the hospital bills, I assume that you had a limited sum in mind? That is, you didn't have the idea it was going to run to thousands of dollars, at that time, I assume?

A. There was a discussion at that particular moment applied to the bills of the hospital at Fort Lauderdale. Mr. Thomas had been taken there that afternoon, and there was no other arrangement made for the payment of those bills. Without consulting anybody else I told Mr. Riley to go ahead and arrange to pay those bills.

Q. Well now it appears from the records here that a great deal more was paid to Thomas after that time, for expenses and for other items, that are in the records as Attendants?

A. Yes, sir.

Q. Did you have anything to do with that?

A. Yes. I took that subject up with Mr. Scott and consulted with him about it. As the result of those consultations we continued to pay Mr. Thomas' expenses as they continued, as expenses for quite some time. He was in the hospital at West Palm Beach for a considerable period, and after he was discharged from the hospital he was taken to his home, and he had to have an attendant there for a while; that is, he had an attendant, and somebody to help his wife, at the time she was pregnant. And the account was set up and charged there, Attendant-Thomas. That is it largely. It was reduced at a subsequent time, and it still continued in a certain sense as an attendant payment, as Thomas was employed on a boat, and because of his incapacity it was necessary for him to employ somebody else to help him on the boat. I don't think that is true any more, but the bookkeeper has continued marking the charge there as Attendants.

Q. Those payments continued for some time after there was any necessity for Abel's having any assistants?

A. Thomas?

Q. For Thomas having any assistants?

A. That is true.

Q. And as a matter of fact they have been continued down to the present time, haven't they?

A. Yes. I don't know whether Thomas still must have somebody on the boat or not; his leg is stiff. I couldn't answer that question. Mr. Riley probably knows.

Q. Now on Thomas alone the expenses have mounted up to quite a substantial sum, haven't they, say about six or seven thousand dollars?

A. I don't recall the amount. They are all there in the books. I think we gave you a memorandum of them.

Q. I think we have it here; we put it in the record this morning. It is a substantial sum of money.

Mr. Underwood:

Do you want the figures?

Mr. Matteson:

Yes, what was the total?

Mr. Underwood:

The figures I gave Mr. Botts in March were payments to others on account of Thomas' injury; through 1937, when they ended, was \$3463.93.

Mr. Botts:

That was Thomas direct?

Mr. Underwood:

No, that is the payments to others on account of Thomas' hospital bills, doctors' bills, and so on; the last one of those was August 9, 1937, according to this. And the payments to Thomas, themselves, concluding on February 28, 1929, amounted to \$3775.

Mr. Matteson:

And the two added together come to something over \$5,000?

Mr. Underwood:

Over seven; \$7100 or \$7200.

Q. Now you don't want us to understand that this substantial expense has been incurred on behalf of the Seminole Boat Company in the financial condition in which the Seminole Boat Company is, without the knowledge and consent of the stockholders, do you?

A. Well I don't know. I assume they know about it, yes. Mr. Scott was in New York and discussed it with them. I wouldn't make a payment of that size on my own authority. I would if it was such a thing as fur-

nishing expenses there at the hospital at Fort Lauderdale; anything that is an emergency; but no expenditure of that amount without securing authority from somebody—higher authority than myself.

Q. Why do you consider Mr. Scott a higher authority than yourself?

A. He is.

Q. Well, in what way?

A. Well, in the affairs of the Seminole Boat Company; he is the president of the company.

Q. You were the vice-president, were you not?

A. That is right.

Q. And in his absence you were performing the functions of the president, weren't you?

A. That is right; that is what I did when I authorized the expenditure at Fort Lauderdale.

Q. The board of directors hasn't ever authorized these expenditures, has it?

A. Oh, in any formal meeting, the records preserved in the minute book, no.

Q. The only person you talked to about it was Mr. Scott?

A. We consulted about it, and I assume he has secured authority from the stockholders; I don't know.

Q. You yourself didn't have any direct communication with the stockholders?

A. I didn't.

Q. Now with respect to the payment of \$5,000 to Mrs. Abci, did you have anything to do with that?

A. Yes.

Q. What did you have to do with that?

A. I gave her the check.

Q. Did you have anything to do with the arrangements?

A. Yes.

Q. How did that come about?

A. That came about also as a result of discussions with Mr. Scott.

Q. You mean you were instructed by Mr. Scott to make that arrangement?

A. That is right.

Q. And of course \$5,000 is a substantial sum; I assume again that you wouldn't expend any such sum on behalf of the Seminole Boat Company, in its present financial condition, without the authority of the stockholders; is that correct?

A. No, not for any other company without authority of the stockholders.

The Court:

Whose check was it?

A. Palm Beach Company's check.

Q. In other words, the money was advanced by the Palm Beach Company and charged to the Seminole Boat Company, is that it?

A. That is right.

Q. Did you obtain a release from Mrs. Abel?

A. Yes.

Q. Have you that release?

Mr. Underwood:

I don't think I have it in Court.—No I don't have a copy of it in court.

Q. Well will you obtain that release for us and let us see it?

A. I think Mr. Underwood can promise that.

Mr. Underwood:

Yes, I will get it and produce it in Court. I don't know where it is, but I will find it.

Q. Did you obtain a release from John Thomas?

A. No, sir.

Q. Did you discuss with John Thomas, yourself, the arrangements for his compensation?

A. I have had very little discussion with John Thomas, except about the accident itself.

Q. You did discuss the circumstances of the accident with him?

A. That is right.

Q. Do you know who actually made the arrangements directly with Thomas?

A. Mr. Riley.

Q. And did you have charge of the negotiations with Mrs. Abel?

A. That is correct.

Q. In other words, you, yourself negotiated the settlement with her of any possible claim, for \$5,000? Is that the substance of that?

A. You can call it a settlement, yes; we gave her \$5,000.

Q. And obtained a release of any claims?

A. Yes, sir.

Q. On this payment to Mrs. Abel, did you obtain more than one release? Was there one document or more than one document signed by her?

A. I don't know, it seems to me there was only one. I don't know why I should obtain more than one. I am sure there was only one.

Q. You spoke of an occasion where there were fairly extensive repairs on the motors recommended by Mr. Riley; what were those repairs; do you recall?

A. I think, a general overhauling, something like that. Probably the word 'repair' was used inaptly; perhaps I used the word 'repair' inaptly; it was an overhauling.

Q. And did Mr. Riley at that time submit a report as to what he thought was required?

A. He told me he thought that the work ought to be done. I told him I didn't want to pass on it, and suggested

he talk both to Mr. H. C. and to Mr. J. S. Phipps about it, and secure their authority.

Q. How much was involved?

A. I think about \$400.

Q. Were those repairs made, do you know?

A. Yes; the overhauling was done.

Q. That was overhauling of the engines?

A. That is correct.

Q. When was that, do you know?

A. No, I can't recall. I couldn't possibly say. "Some time before the fire, though; I mean a matter of a year or two before the fire.

Q. Well was it as early as 1932, do you think?

A. It is too long ago for me to remember.

Q. Would you say at least two years before the fire? Would that be a fair statement?

A. You see it is already four years since the fire—

Q. You couldn't state that?

A. No, I couldn't say.

Q. Was \$400 the cost of the actual work that was done?

A. I don't know; I remember there was one item of about \$400 which we considered we couldn't decide ourselves, and submitted it to the stockholders of the company.

Q. I am not sure whether you answered—

A. That is the only one I happen to remember of; I don't know I happened to remember that particular one.

Q. I don't know whether you answered this specifically or not: was there any written report submitted by Riley at that time, covering that subject matter?

A. I think so; I think he made a memorandum.

Q. What became of that memorandum, do you know?

Mr. Underwood:

I have it right here. (Paper to witness.)

Q. Then do I understand that the books of the Seminole Corporation were in your office after the beginning of 1934?

A. That is correct.

Q. And in general their keeping was then under your supervision?

A. I would think that was it, yes. Mr. Anderson of that office kept the books himself, under my direction.

Q. Then in effect, the functions of the treasurer of the Seminole Boat Corporation had been delegated to you; is that right?

A. You will have to draw your own conclusion about that, Mr. Matteson. That is what took place.

Q. There was never any action of the directors recorded, authorizing that transfer of functions, was there?

A. Not in a direct sense, no. There was no resolution that has been recorded in the minute book about it. It was agreed among the directors however that that be done.

Mr. Matteson:

I move to strike out the statement that it was agreed by the directors outside.

The Court:

Yes, that is a voluntary statement. (Last question and answer read.) The question was whether it had been recorded. I think it is a voluntary statement; I will grant the motion to strike it.

Q. I take it Mr. Anderson is the man who can enlighten us as to the records that were actually kept in your office?

A. I think he can do far better than I can. I know about it in a general way; not as accurately as he does.

Q. And you will be here later in the trial if we want to ask you anything about that?

A. Yes, sir.

Mr. Matteson:

That is all I have at this time, if your Honor please.

By Mr. Botts:

Q. With respect to these payments of \$3463.93 for the benefit of John Thomas, and \$3775 directly to him, these disbursements were made actually by checks of the Palm Beach Company, were they?

A. Yes, sir.

Q. And do I understand you to say—

A. Let me add to that, they were made by checks of the Palm Beach Company up until Palm Beach Company became consolidated with Bessemer Properties, Inc.; and thereafter by the latter company.

Q. Now did I understand you correctly to say that you had no agreement whatever with Mr. Thomas with reference to these payments that were made?

A. Mr. Botts, that is absolutely so: there isn't any now.

Q. And then so far as you are aware, and so far as any written record of which you have any cognizance, there is no reason now why John Thomas couldn't come in and sue anybody that he conceived might be liable?

A. That is right. He can sue us tomorrow, unless he lets too long a time go by. He has not given us any release.

Q. Mr. Alley, you are a lawyer, and this seems such an astounding situation to me from a legal standpoint, that you would make these enormous payments and get no release directly or indirectly, express or implied. I would like to ask you if there is any explanation of such payments being made under these circumstances, which I think you as a lawyer will concede are at least most unusual?

A. Any explanation?

Q. Yes.

A. Well, I don't think Mr. Thomas will sue us.

Q. Well have you any reason for thinking that?

A. No, except that I know the man, and he has been treated decently, very decently; his expenses were paid. He hasn't been paid what you might call damages, but he was taken care of when he was in desperate plight. We have confidence in lots of people; we do it.

Q. Well isn't it rather customary even in cases where you make voluntary payments, to at least take the precaution to get some sort of a release in return for them?

A. That is true, but it wasn't done in this case though.

Q. So I will ask you again if, being a lawyer, knowing the dangers of this sort of thing, can you offer us any explanation as to the unusual, out of the ordinary procedure in this case?

A. Well I don't know whether it is entirely unusual. The payments have been made from time to time; there has been no lump sum paid to him; we paid his hospital bills, when he was in the hospital; and paid his nurses' bills when he was in the hospital at Fort Lauderdale; his doctors' fees. He is the kind of a man that all he is concerned about is to get tided over in his dire distress, you might say.

Q. Have you any agreement with Mr. Thomas, or understanding, by implication or otherwise, how long you will continue to make these payments to him?

A. No, we haven't.

Q. He has been on the witness-stand now and pretty well precluded himself from a legal action against any of you. Do you have any impression now as to how long you have in mind to continue these gratuities?

A. I have no impression at all; I don't think that is a matter that I could decide.

Q. That is a matter to be decided by the principals of these various corporations; is that right?

A. I should say, by the stockholders of the Seminole Boat Company. I don't know what is in their minds, and neither does Mr. Thomas.

Q. I understood you to say that you had never personally discussed these gratuities with the stockholders of the Seminole Boat Company?

A. No, I haven't.

Q. As a matter of fact, Mr. Alley, isn't it true that these payments are like all other matters with reference to the Seminole Boat Company, previous to and subsequent to the fire, are made at the will of the stockholders, or whom the nominal officers were merely the delegated representatives?

A. Your question is a little too complicated, Mr. Botts. Prior to the destruction of all the assets of this corporation, routine expenditures were made by the directors without consultation with stockholders. The major expenditures were in the case of all corporations discussed with the stockholders where it is possible to do so. The operations of the company of course were for the benefit of the stockholders; I don't know of any company in which the operations are not for the benefit of the stockholders; they are supposed to be, at any rate; and that was true in this company. Now as to the expenditures which are to be made in the future, when the assets of the corporation are all gone, certainly we wouldn't spend any without taking it up with the stockholders, I think; that would be my surmise, at any rate. However, I didn't take it up with the stockholders; I took it up with Mr. Scott.

Q. Now then these two items of expenditure totaling over twelve thousand dollars, made by the Palm Beach Company or its corporate successor, at a time when the Seminole Boat Company had no assets at all except a little junk; from whom did the Palm Beach Company—or by whom was the Palm Beach Company reimbursed?

A. I don't believe it has been. I think those are still outstanding on the accounts of the Seminole Boat Company, accounts payable, to the Palm Beach Company, by

Bessemer Properties—I believe. I don't know whether that is wholly true or not, but that is my impression.

Q. As head of the Palm Beach office of the Palm Beach Company and the person responsible for the expenditures, did you go ahead and make these expenditures without any assurance at all as to reimbursement?

A. Yes, sir. Mr. Scott's approval was sufficient for me. I knew he wouldn't give me his approval unless it was carried out.

Q. You then went on the assumption that Mr. Scott was authorized by the stockholders and that your company would be ultimately protected from these stockholders?

A. I went on the assumption that Mr. Scott had either obtained authority from the stockholders or had assumed to act without obtaining it; in either case I would act under his instructions. I never questioned Mr. Scott's authority.

Q. This release from Mrs. Abel, did you prepare that release?

A. I am not sure about that.

Q. You were asked a question as to whether or not there was more than one release and you have agreed to bring in the release. I am interested to know whether there was more than one release, because there may be a release running to the Seminole Boat Company and another release running to some other party. I am just interested to know whether or not that is true, so that when we have the release we will have evidence of all the persons that were released.

A. I am quite sure, Mr. Botts, there was only one document.

Mr. Botts:

I just want to state in the record that there are some matters covered by this ledger that I might want to question Mr. Alley about. I understand that the man who actually kept the book is coming tomorrow, so I will re-

serve the right to recall Mr. Alley for further cross-examination in the event the bookkeeper's testimony doesn't cover the points I have in mind. It may be that I will have no further questions of Mr. Alley.

Mr. Underwood:

If your Honor please, the bookkeeper who kept the books after the books were sent to Palm Beach will be here tomorrow, I believe, and Mr. Alley will not leave the jurisdiction.

The Court:

All right.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Alley, was John Thomas ever employed by the Palm Beach Company or the Seminole Boat Company at or prior to the time of the fire?

A. Not to my knowledge.

Q. Is there a negro of the same name, John Thomas, who appears on the payrolls of the Palm Beach Company?

A. There is.

Q. And is that a different person?

A. It is. As a matter of fact when I first heard of the fire that is who I thought it was.

Q. Who were asked by Mr. Matteson whether or not the directors of the Seminole Boat Company ever recorded any resolution in the minute book about moving the account books of the Seminole Boat Company to Palm Beach. Can you tell me whether or not the directors ever discussed and reached a decision about that?

Mr. Matteson:

If your Honor please, I object to that on the same ground that we objected to similar testimony of the other

witness, and my recollection is that your Honor ruled that that was inadmissible.

The Court:

This is the same matter, is it not?

Mr. Underwood:

I think it is, your Honor. I think it is competent and admissible. If Mr. Alley answers the question in that way it will appear that the directors met or without meeting discussed and acted upon this situation. I know of no rule of law to the effect that a valid decision made by a board of directors of a corporation must be recorded in a minute book. It strikes me that it is a perfectly valid act of the directors.

The Court:

The objection is sustained.

Q. You were asked, Mr. Alley, about some overhauling of the motors of the Seminole Company. I show you a paper with some triplicate vouchers and a bill attached. Can you refresh your recollection as to the time from those?

A. After looking at these I am quite sure that the time I mentioned was January, 1933.

Q. Do these papers refer to the incident that you spoke of?

A. I believe so. It corresponds substantially and this is for work of the same nature. I am reminded of it by the memorandum of H. C. Phipps which accompanies the vouchers.

Q. Do you recognize this yellow slip of paper as a part of any record with which you are familiar or as coming from files with which you are familiar?

A. I can't quite go that far. It is typical or copy of memoranda kept in the Palm Beach office.

Q. Did you ever see the original of that memorandum?

A. Yes.

Q. Do you know whether the original of which this appears to be a copy was ever sent to the person to whom it is addressed?

A. It was and it was initialed by him.

Q. Do you recognize these two documents marked "Triplicate Paymaster's account" as anything with which you are familiar?

A. Yes.

Q. What are they?

A. Checks of the Palm Beach Company and similarly of the Bessemer Properties. They are made up in triplicate; one is the original check; the second is a duplicate identical with this triplicate, and the third is the triplicate, as appears here. The original of course is given to the payee of the check; the duplicate is sent to the out of State office and the triplicate is kept in the files of the office issuing the check.

Mr. Underwood:

May we have these marked for identification?

(The documents above referred to were marked Respondents' Exhibits 3T-1, 3T-2, 3T-3 and 3T-4, respectively, for Ident.)

Mr. Underwood:

That is all I have from Mr. Alley now.

Mr. Botts:

I have no further questions of Mr. Alley at this time, and probably will not have any at all.

The Court:

All right; we will quit for the day. We will meet at 9:30 in the morning.

(Thereupon adjournment taken to 9:30 A. M., May 11, 1939, the next day.)

1829

Miami, Florida,
May 11, 1939,
9:30 A. M.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

Morning Session.

Thereupon, JAMES F. RILEY, JR., was produced as a witness in behalf of the Respondent Phipps, and having been previously sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your full name, please?

A. James F. Riley, Jr.

Q. R-i-l-e-y?

A. Yes.

Q. Where do you live?

A. Palm Beach.

Q. By whom are you employed at the present time?

A. By Bessemer Properties, Inc.

Q. When did you first obtain employment with any of the companies in which the Phipps family is interested?

A. In September of 1924 I was employed by the Palm Beach Company.

Q. That is the predecessor of Bessemer Properties?

A. Yes.

Q. What was the nature of your work in the beginning?

A. Timekeeper and paymaster.

Q. Did the nature of your work change?

A. Yes, it changed in 1925, when I was made purchasing agent; I also retained, however, the job of timekeeper and paymaster.

Q. Were there subsequent changes after 1925?

A. In 1926 I was put in charge of maintaining the properties that the company owned; also maintaining estates that were owned by the stockholders and principals of the company.

Q. Was there any subsequent change?

A. In 1935 I was made property manager and put in charge of the Palm Beach office.

Q. What month was that?

A. It was in May, 1935.

Q. Who had been in charge of that office prior to that time?

A. Mr. R. C. Alley.

Q. For quite some years?

A. Since 1928, I believe.

Q. During all of that time who paid you?

A. The Palm Beach Company.

Q. Did Mr. J. S. Phipps ever pay you?

A. Not a cent.

Q. Were you ever Mr. J. S. Phipps' secretary?

A. No, sir.

Q. Were you ever anybody's secretary?

A. No, sir.

Q. What was your earliest connection with the Seminole?

A. In 1924 and 1925 I kept the time of the crew on the Seminole and paid them off on the payroll.

Q. Between that time and the time of the incorporation of the Seminole Boat Company, did you perform any other duties in connection with the Seminole?

A. No, sir.

Q. Did you at any time after the incorporation of Seminole Boat Company, receive any instructions from anybody as to duties to be performed in connection with the Seminole?

Mr. Matteson:

Would it not be advisable to mention it by date rather than the general reference to the incorporation?

Q. All right. Any time after the fall of 1928.

A. In 1931 I as given some instructions.

Q. By whom were you given those?

A. Mr. R. C. Alley.

Q. And what were they?

A. He advised me that Mr. Scott, who was then in Miami, I believe, had told him that the Seminole—

Mr. Botts:

We object to that; I object to what Mr. Alley said Mr. Scott told him.

Q. Don't tell us what somebody else said to somebody else. Just tell us what Mr. Alley said to you in the way of instructions.

A. Mr. Alley said that the Seminole was being moved to Palm Beach and that I was to have charge of it.

Q. Did you have anything else in the way of instructions at that time?

A. He said that the boat was then coming up, and would later be moved to Ft. Lauderdale for storage, and that I was to make inspections during the summer from time to time to see that the boat was in condition.

Q. From that time down to the time of the fire, Mr. Alley who was it as Palm Beach that made the ordinary decisions about the upkeep and maintenance of the Seminole?

A. I did.

Q. Did you ever receive any instructions from Mr. John S. Phipps as to these matters?

A. Not in the ordinary course of business; no, sir.

Q. Did you have any limit as to amount of money you could spend on the Seminole without receiving instructions from somebody else?

A. There wasn't any limit set, but I had a limit in my own mind, something like a couple of hundred dollars or three hundred dollars, depending on what the repairs was.

Q. How did you get your information as to what work was necessary on the boat from time to time?

A. Through the Captain, who would get it from other members of the crew, I suppose.

Q. Was there any occasion when something was called upon to be done in excess of the mental limit that you had?

A. Yes.

Q. Do you remember whether that happened once or more than once?

A. I only remember one time.

Q. Will you tell us what transpired?

A. On that particular occasion the Captain of the boat told me that he thought the motors, the main motors, should be overhauled, and that the generator in it also needed some overhauling, and I took the matter up with Mr. Alley, and also with Mr. John S. Phipps and I also wrote a memorandum to Mr. H. C. Phipps, asking their permission, and received their permission to have the work done.

Q. I show you a paper which has been marked Exhibit 3-T-1 and ask you if that is the memorandum you speak of, or a copy of it.

A. Yes; that is a copy of it.

Q. What did you do with the original of that memorandum?

A. I gave it to—either handed it to Mr. H. C. Phipps or put it on his desk.

Q. Did you get any response from him?

A. Yes, sir.

Q. What was the response?

A. He approved the expenditure, I think, verbally; I don't remember getting the original of this letter back.

Q. What year was that?

A. That was in 1933.

Q. You will find some bills attached to that. Will you tell me whether they have any reference to that matter?

A. Yes; here is one of the Railway Express Agency for express charges on motor parts from the Winton Engine Corporation, and then there is a bill from the Winton Engine Corporation for \$168; that, however, is included in the Railway Express Agency charges. Then there is a check to H. Johnson of Ft. Lauderdale for \$325 for labor in making the repairs and overhauling the motors.

Q. These checks that you speak of; will you tell me what they are; in the first place, they are Palm Beach Company vouchers—

A. Yes; triplicate paymaster vouchers.

Mr. Underwood:

I offer these in evidence.

Mr. Matteson:

No objection.

The Court:

Let them be admitted in evidence.

(Thereupon the documents above referred to were marked Respondents' Exhibits 3-T-1, 3-T-2, 3-T-3 and 3-T-4, respectively.)

Q. Mr. Riley, you have spoken of instructions that you received from Mr. Alley in 1931. Will you tell me, please, whether those instructions were ever countermanded or rescinded prior to the time of the fire?

A. No, sir.

Q. Did Mr. John S. Phipps ever give you any instructions as to doing a particular thing or not doing a particular thing concerning any part of the engineroom of the Seminole?

A. No, sir.

Q. Have you been on the Seminole when Mr. Phipps was on the Seminole?

A. Yes, sir.

Q. Did you ever see him in the engineroom?

A. No, sir.

Q. Do you remember how you first met Captain Pilkington?

A. Yes, sir.

Q. Will you tell us?

A. I was introduced to Captain Pilkington in 1931 by Captain Bryant, who was then Master of the Seminole.

Q. Was anybody else there?

A. No, sir.

Q. Have you ever met Captain Pilkington at his yard with Mr. Phipps?

A. Yes, sir.

Q. How many times did you and Mr. Phipps go down to Pilkington's yard together?

A. I remember twice; twice is all that I remember ever being there with him at Captain Pilkington's yard.

Q. Can you fix the time?

A. One of them, I think, was in the spring of 1932.

Q. Tell us, what transpired on that occasion.

A. On that occasion there was a trip planned during the summer by Mr. J. S. Phipps and Mr. H. C. Phipps and other members of the family, and Mrs. J. C. Phipps and I went there to look at the boat, and he went through it with me, looked at the mattresses and the painting and so forth, see that the boat was in good shape from that standpoint and found that it was, and when we had finished our inspection of it, the only request that he made was that I have the radio repaired.

Q. Did he inspect the engineroom at that time?

A. No, sir.

Q. Did he have any conversation with Mr. Pilkington in your presence?

A. No.

Q. You spoke of the second occasion; when was that?

A. That was in the spring of 1934.

Q. You and Mr. Phipps went together to Pilkington's yard?

A. Yes.

Q. What transpired on that occasion?

A. We went there to look at the Iolanthe which was owned by Mr. Phipps, and he was planning a trip at that time on the Iolanthe, and he was wondering whether it was in good condition, and how long it would take to get it ready. When we arrived there we saw Captain Pilkington and he gave us the keys to the Iolanthe and we went through the Iolanthe. He came off of the boat last; I came off the boat first, and I saw Captain Pilkington, and started talking to him about the rate on the Seminole. We had been paying during the past year \$50 a month, and he had advised me that he was going to raise the rate to \$75 a month. I talked to him along the lines that at that time times had not improved any, and I didn't see why the rates should be raised to \$75 a month, and also that there was a number of boats kept there, the

Iolanthe and the Clip and the boat owned by Mrs. Guest, The Dorothy, and that with all of those boats being stored there I thought he should keep the rate on the Seminole the same. He said that he didn't think he could do it. About that time Mr. Phipps came by and heard him talk, heard the gist of the conversation, and he told Captain Pilkington that he just couldn't afford to pay high rates for storage of the boat, and unless the rates remained the same that year, that I (meaning me) planned to move the boats to the Gulfstream in a little yacht basin we have there. Captain Pilkington said that he didn't think he could do any better, and as we walked off I just told him to do the best he could and let me know.

Q. Was that the entire conversation, the substance of the entire conversation, as you recall it?

A. Yes, sir.

Q. Have you told us the substance of everything that Mr. Phipps ever said to Captain Pilkington in your presence?

A. Yes, sir.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence that you were Mr. Phipps' secretary?

A. No, sir.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence in words or substance that Captain Pilkington would take your orders with respect to the Seminole?

A. No.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence that what you did in respect of the Seminole was with Mr. Phipps' authority?

A. No, sir.

Q. Do you remember when Schlappi was first employed by you?

A. It was either in 1932 or 1933; I am not positive about the year.

Q. How did that come about?

A. We had an engineer, a brother of J. W. Bryant, and he had got a job for the summer and had gone north and stayed there, and we needed another engineer on the Seminole, so Bryant recommended Schlappi and upon his recommendation I employed him.

Q. For what boat?

A. For the Seminole.

Q. Did you have any conversation with Mr. John S. Phipps before you employed Schlappi?

A. No, sir.

Q. Did you submit to Mr. John S. Phipps the question of whether you should employ somebody instead of Schlappi?

A. No, sir.

Q. Who fixed the rate of Schlappi's pay?

A. I did.

Q. What was the course of Schlappi's employment from that time on?

A. Well, he was employed off and on for the next three years, both for the Seminole and for some of the other boats, the Iolanthe, and Mrs. Guest's boat. He not only worked as an engineer but worked as a mechanic, doing repair work on outboard motors and motors in other boats.

Q. How was he paid?

A. He was paid by check, I believe, in almost every instance.

Q. What was the routine of preparing the check?

A. Well, Schlappi would let his pay run along for two or three weeks at a time, and he would come in and he and I would work it out, telling me just where he worked and who he worked for, and we would draw a check for that amount.

Q. What was the importance of finding out where he had worked and who he had worked for?

A. To make proper charges on these checks.

Q. How were these charges made?

A. They were written on the duplicate and triplicate of the vouchers that I gave him.

Q. And when he was employed on the Seminole who determined how the charge should be made?

A. I did.

Q. How was it made?

A. It was made to the Seminole Boat Company.

Q. For any work done on the Iolanthe, who determined how the charge was to be made?

A. I did.

Q. When he was on the Iolanthe.

A. How was his pay charged?

A. To "John S. Phipps Boat."

Q. Is that phrase "John S. Phipps Boat" the name of one of the accounts on your books at Palm Beach?

A. Yes.

Q. When he worked on the Dorothy, Mrs. Guest's boat, how was he paid or how was the pay charged?

A. Charged to "Mrs. F. E. Guest Boat."

Q. That is the name of another account on the books of Palm Beach Company?

A. Yes, sir.

Q. I show you a file of a duplicate Palm Beach Company vouchers, at least that is what I call them. Will you tell me whether that is what they really are?

A. Yes, that is what they are.

Q. Will you look through those and tell me whether these when issued, were first approved by you?

A. Yes, sir.

Q. Those were all to Schlappi?

A. Yes, sir.

Q. And covered the period between April 1934 and November 1935; is that correct?

A. Yes, sir.

Q. Now, for illustration, the first one is numbered 5969, and I observe that a part is charged to one and a part charged to another person or corporation. Will you tell me how that came about?

A. Well, Schlappi had worked from April 2nd to April 21st, which figured twenty days. Before that time he had worked for the Seminole Boat Company \$101. worth and for J. S. Phipps Boats, \$35.50, making a total of \$136.50.

Mr. Matteson:

I take it that what the witness is saying is that these are the amounts that were charged to the Seminole Boat Company.

Mr. Underwood:

I will put them in.

Mr. Dyer:

Let's get them in evidence now.

Mr. Underwood:

I offer the file of vouchers referred to.

Mr. Matteson:

No objection.

(Thereupon the file of vouchers above referred to was marked Respondents' Exhibit 3-U.)

Mr. Underwood:

So that the record may be clear Exhibit 3-U includes vouchers numbered 5969, 6171, 4289, 6349, 6447, 8032, 8444 and 5020.

Q. Is that all that you could find in your records covering the period in question?

A. Yes, sir.

Q. Now getting back to this first one which we discussed a minute ago, number 5969: Why was it that part of that was charged to the Seminole Boat Company?

A. Because he was working on the Seminole for the Seminole Boat Company.

Q. Why was it that part of it was charged to "Mr. John S. Phipps Boat"?

A. Because he was working on the Iolanthe at that time; either the Iolanthe or the Clip.

Q. The little support attached to the voucher duplicate does not show which of Mr. P. S. Phipps' boats he was working on at that time?

A. No, sir.

Q. Now in looking at voucher 6289, I notice that a portion of that charge is made to Mr. John S. Phipps' Boat and a portion Mrs. F. E. Guest Boats. Why was part of that charged to Mr. J. S. Phipps Boat?

A. He worked fourteen and one half days on the Iolanthe, which was Mr. Phipps' boat.

Q. Why was part of it charged to Mrs. Guest?

A. He worked four and a half days on the Artemis, a boat which belonged to Mrs. Guest.

Q. Is that the same as the Dorothy?

A. Yes.

Q. Will you tell me, without my going into too much detail, whether or not that was the regular routine of charges in your office?

A. Yes.

Q. Do you remember the Seminole's being put in commission in 1935?

A. No, sir.

Q. Do you remember her being moved from Pilkington's?

A. Yes, I remember that she was moved.

Q. Did you have anything to do with that?

A. No.

Q. Did you have anything to do with the employment of an engineer for her at that time?

A. Well, after she was moved to Miami, I did.

Q. Tell us how that came about.

A. I think about two weeks after the boat was moved to Miami. Mr. Hawkins, of the Miami office, called me and said that Captain Baker, who was then looking at the boat, had a charter and he had to leave—

Q. That was a charter to Baker's own boat?

A. Yes. And he asked me if I could get an engineer and a sailor to stay on the boat and look after it.

Q. What did you do?

A. I employed Schlappi and Elliott Bryant.

Q. Did you consult with Mr. J. S. Phipps before you did that?

A. No.

Q. Who fixed the rate of Schlappi's and Bryant's pay at that time?

A. I did.

Q. Do you remember when Schlappi's was paid for the work he then did?

A. He received two checks, as I remember it; one along about the first of April and another one in May.

Q. I show you duplicate voucher 8032, which is a part of Exhibit 3-U, and ask you whether or not that includes the time that Schlappi spent on the boat when you engaged him and sent him to Miami.

A. Yes.

Q. In whose handwriting is that yellow slip attached to that paper?

A. It is my handwriting.

Q. When did you make that up with reference to the date of the voucher?

A. Well, either the same day the voucher was made or the day before.

Q. I notice that of the total sum paid to Schlappi, part of it is charged to the Seminole Boat Company, a part to Mr. J. S. Phipps, and a part to Mrs. F. E. Guest Boats. Will you tell me how that came about and why?

A. Well, the part that was charged to the Seminole Boat Company was the time that he was on the Seminole when it was at the Royal Palm Dock, and the part that is charged to J. S. Phipps Boats—there is a part of that charge due to the trip that was taken that spring, and I believe that some of this also includes a trip that was taken on the Iolanthe later. I am just trying to see whether there is another voucher here on that. No, there isn't.

Q. In the ordinary routine of your office when those vouchers were prepared, did the charges appear on them?

A. You mean on the original check?

Q. Yes.

A. No, they didn't.

Q. I show you another piece of paper; can you identify that?

A. This is the original voucher of the duplicate voucher paid to Schlappi on May 6th.

Q. That is number 8032?

A. Yes.

Q. In other words, this is the top half of the original part of the check that went to Schlappi?

A. Yes, sir.

Mr. Underwood:

I offer that and ask leave to include it in Exhibit 3-U.

Mr. Matteson:

No objection.

Mr. Botts:

No objection.

The Court:

Let it be included.

Q. Now, Mr. Riley, how did the employment of R. C. Abel first come about?

A. I employed him in 1933, in June I believe it was, and I employed him to run Mrs. Guest's boat to take Mr. Townsend Martin to Bimini.

Q. Was that Abel's first employment by anyone in the Phipps family at Palm Beach?

A. Yes, sir.

Q. And from that time on how was he employed?

A. Well, he was employed in that particular job for about two or three weeks. Then in the fall of the same year I employed him to run another fishing boat, the Clip, which belonged to Mr. J. S. Phipps; and then from then on he worked more or less steadily for the various members of the family and the companies until 1935, at the time of the fire.

Q. Have you obtained from the files of the Palm Beach Company all the checks and vouchers to Abel?

A. Yes, all that I could find.

Q. Are those they?

A. I see that he was employed a good deal longer than the two weeks I said; also, I remember that he was employed after Mr. Martin took his trip; he was employed for general work on the Dorothy, Mrs. Guest's boat, as it was then known.

Q. At the moment just tell us those are, all of the Palm Beach Company's checks to Abel?

A. These are all of the checks that I could find payable to Abel.

Mr. Underwood:

If your Honor please, I offer the checks, and I think it may be well for me to read the numbers into the record so we will know what the exhibit includes.

The Court:
All right.

Mr. Underwood:

Numbers 4206, 4247, 4365, 4383, 4453, 4511, 4757, 4836, 4837, 4861, 4973, 5009, 5169, 5244, 5292, 5320, 7735, 7950 and 8320 to some of which are attached supporting memoranda.

Now, as a convenient summary of those, I have made an analysis which I shall offer merely as a convenient summary, with the understanding that it is not binding on anybody.

Mr. Matteson:

I suggest that it be attached to the exhibit, with the understanding that the analysis itself is not binding on anybody.

Mr. Underwood:

That is quite all right. It is in fact my statement of what the exhibit shows.

The Court:

That is all right.

(Thereupon the checks numbered above, together with supporting data and the analysis above referred to, were marked Respondents' Exhibit 3-D.)

Mr. Matteson:

If your Honor please, I simply would like to make this statement on the record: That all of these various documents that are being introduced might possibly be objectionable on the ground that they are self-serving declarations. I am not going to object to them on that ground because we do want to have all of the documentary evi-

dence here. I want to simply make the comment that I am going to argue that as going to the weight of the evidence rather than to its admissibility.

Q. Will you tell us, Mr. Riley, whether or not these were made in the ordinary course of business?

A. They were.

Q. Now referring to Exhibit 3-D, voucher number 4206, I notice that charge appears as against Townsend Martin. Will you tell us how that came about?

A. Abel was working for Townsend Martin at that time for that week.

Q. I observe that voucher number 4453 is charged to Mrs. F. E. Guest Boat. How did that come about?

A. Abel was working for Townsend Martin at that time for that week.

Q. I observe that Voucher Number 4453 is charged to Mrs. F. E. Guest Boat. How did that come about?

A. Abel was working on the Boat Dorothy which belonged to Mrs. Guest.

Q. On Voucher Number 4757 I notice that Abel's pay was charged to Mr. Bradley Martin. How did that come about?

A. Abel was working for Mr. Bradley Martin.

The Court:

Who is Mr. Bradley Martin?

The Witness:

Mr. Bradley Martin is the son of Mrs. Martin, who was a Miss Phipps.

(By Mr. Underwood):

Q. He would be a nephew of John S. and H. C. Phipps?

A. That is right.

Q. I notice on Voucher Number 5320 the charge is against Mr. John S. Phipps Boat. Will you tell me how that came about?

A. He was working on a boat that belonged to Mr. John S. Phipps, the Clip.

Q. Here again Voucher Number 7735 the charge is against Mr. J. S. Phipps Boat. How did that come about?

A. Because he was working on the boat Clip which belonged to Mr. J. S. Phipps.

Q. Now on Voucher 7950 there is a portion of the charge to Mrs. F. E. Guest Boat and a portion to Mr. J. S. Phipps Boats. How did that come about?

A. Part of the time he was working for Mrs. F. E. Guest and part of the time for Mr. J. S. Phipps on one of his boats.

Q. I notice that on Voucher 8320 the division is made in three parts: Seminole Boat Company, Mrs. F. E. Guest Boat and Mr. J. S. Phipps Boat. How did that come about?

A. He worked for the Seminole Boat Company—

Mr. Matteson:

I object to the statement that he worked for the Seminole Boat Company. I think the point is that he worked on the Seminole on that date. Isn't that what the witness means to say? I think that the statement that he worked for the Seminole Boat Company is a conclusion, and I move to strike that out.

The Court:

I understand the point you make. I think it is proper to go in, however.

Mr. Underwood:

Will you go back and read the answer, so much of the answer as you have—

(Thereupon the answer was read as above recorded)

(By Mr. Underwood):

Will you continue your answer, please?

A. He also worked for Mrs. F. E. Guest and for Mr. J. S. Phipps.

Q. Attached to the duplicate voucher is a yellow sheet of paper. In whose handwriting is that?

A. Mine.

Q. Do you remember when you made that?

A. The day that the check was drawn, June 29th, 1935.

Q. And who decided how much was to be charged to each of those three?

A. I did.

Q. Or, what basis did you reach that decision?

A. On the same basis that we always used; we divided the time according to who he was working for.

Q. And that check was made payable to Mrs. Abel?

A. Yes.

Q. For wages that were due Mr. Abel up to the time of his death?

A. That is right.

Q. Now in looking at this voucher 7950 I notice the total amount is \$36.45, of which \$32.62 is charged to Mrs. F. E. Guest Boat and \$3.83 is charged to Mr. J. S. Phipps Boat. Can you tell me what that \$3.83 was for?

A. This is reimbursement for expenses of \$3.83. There is some items listed—for expenses of 95 gallons of gasoline bought—

Q. For what boat?

A. For the Clip that Mr. J. S. Phipps owned. And I suppose "repairs to water pump"—

Q. What boat?

A. To the Clip.

Q. All right.

A. Five dollars for some work on a Plymouth car for Mr. Phipps, and then deducted from that \$23.83 is \$20.00 that had been advanced to Abel, leaving a balance of \$3.83.

Q. The advance to Abel of \$20.00 was by whom?

A. From Mr. Phipps.

Q. Was any part of that \$3.83 in connection with the Seminole?

A. No, sir.

Q. In giving your answers to the last few questions you had before you one of the supports attached to the duplicate of that voucher?

A. Yes, sir.

Q. Does that bear your initials?

A. Yes, sir.

Q. When were those initials put on with respect to the date of the check?

A. Probably the same day that we drew the check.

Q. Abel wasn't always paid by check, was he?

A. No.

Q. How otherwise was he paid?

A. Paid by Palm Beach Company payroll.

Q. Mr. Riley, I show you a number of documents here which have heretofore been marked Libelants' Exhibits for identification Nos. 70, 74, 71, 69, 68, 73 and 72. Do you recognize these?

A. Yes.

Q. What are they?

A. They are payrolls of the Palm Beach Company.

Q. Have you looked through the Palm Beach Company Payrolls to pick out all of those reflecting payments to Abel?

A. Yes.

Q. Is that all?

A. This is all.

Mr. Underwood:

I offer these several payrolls in evidence.

Mr. Botts:

Under the same conditions heretofore stated, we have no objection.

The Court:

Does that mean that at the conclusion of the taking of the testimony these are to be withdrawn, just leaving the memorandum in?

Mr. Botts:

After we examine them and we find anything in them which we think is not admissible, we can object to it at that time; further, if we have no objection to them, then at the end of the testimony we will probably agree to substitute this or some other summary, if we happen to find any errors in this summary.

Mr. Underwood:

That is satisfactory.

The Court:

Is that agreeable?

Mr. Botts:

Yes.

The Court:

They are admitted subject to your right to make any objections and also, unless it is otherwise made to appear that there is some reason why it should not be concluded

in that manner, the originals will be allowed to be withdrawn and the summary substituted in lieu of the originals.

Mr. Matteson:

That is all right.

The Court:

Let them be admitted under the identification numbers under the ruling that I have just made.

The Reporter:

Mr. Underwood, are you offering them. You will notice that they were offered for identification under Libelants' exhibit numbers.

Mr. Underwood:

I am offering them under their identification numbers.

(By Mr. Underwood):

Q. Now did Mr. Anderson at your and my request prepare an analysis of those showing the dates of the payroll, the amount paid to Abel and the persons to whom charged?

A. Yes.

Q. Is this a photostatic copy of it?

A. Yes, sir.

Mr. Underwood:

Now I will offer this as a convenient summary, with the understanding that it is not binding in any particular where it may differ from the payrolls themselves.

Mr. Matteson:

Just attach it to the exhibit, it being agreed that the summary is not in evidence.

Mr. Underwood:

That is right. It is simply for convenience, so that these gentlemen and your Honor will not have to wade through these payrolls.

(Thereupon the summary above referred to was attached to Libelants' Exhibit 68 for identification, as per above arrangement.)

(By Mr. Underwood):

Q. Now, Mr. Riley, we will take this top payroll, marked Exhibit 70. I will ask you to explain to us the ordinary course of business as to making up these payrolls and obtaining information as to the charge and to whom they were charged.

A. We had one man delegated in our office to make up the payroll, and at the end of the week the various foremen on the various jobs came in and reported to him on what jobs their men were working the preceding week. We also had a method of keeping a day by day record that these foremen used, and in most cases they turned in that record and this man made up the payroll. In some cases where a man was working by himself, such as a painter or a carpenter, he kept his own time and at the end of the week he came in and gave this man the information so that he could properly charge out his work for the preceding week.

Q. Now on this Exhibit 70 can you find a place indicating where Abel was paid?

A. That is where he signed for his money (pointing).

Q. That sheet is dated at the top "week ending June 13, 1935", and the line to which you point says, "Abel, R. C. Cap: (meaning captain), \$35.00". Is that Abels' signature in the left-hand column?

A. Yes.

Q. Will you just show us how that was charged; against whom?

A. It was charged to H. Bradley Martin.

Q. Does that appear on some paper?

A. Yes, it appears on the distribution sheet, as we call it.

Q. Is there such a sheet for each payroll?

A. Yes.

Q. And that appears on the first distribution sheet, which is the second sheet following the one you just referred to?

A. Yes, sir.

Q. Will you read that?

A. Read this?

Q. The entry insofar as it refers to "Abel".

A. It has shown at the top, "H. Bradley Martin"; then at the side, under the caption "employee" is "Abel, R. C." Under classification "Captain", and then it shows Thursday, Saturday, Sunday, Monday, Tuesday, Wednesday, Thursday, eight hours each. And then it says, "week" instead of "hours", and the number of hours and \$35.00.

Q. Under "rate"?

A. Under rate, and the amount \$35.00.

Q. Was that made in the regular course of business?

A. Yes, sir.

Q. Will you tell me whether or not the same routine was followed as to the other employees?

A. Yes, it was.

Q. I notice charges up here to business expense—Plaza grounds; West Plaza Building No. 1; West Plaza Building No. 2, and so on. Will you explain how that was done, and whether there was any difference between the way the other men and Abel were dealt with?

A. What is the question.

Q. I just want to know the routine as to charging the pay of these other accounts; how they compared with the routine as to Abel?

A. Just exactly the same; that is just what I explained; that the man who made this payroll had a report from the foremen of the various men who worked for us, as to where they worked the preceding week, and from that he made up this distribution sheet, as we call it. This particular one has twenty-five different accounts on this payroll.

Q. That is, the pay to the men employed during that week was charged to twenty-five different accounts?

A. Yes.

Q. Of which Abel was one, and the sheet shows the charge to Bradley Martin?

A. Yes.

Q. Look on the following week; do you find Abel there?

A. Yes.

Q. That is on the yellow sheet for the week ending June 6, 1931?

A. Yes.

Q. It shows the same that it did before?

A. That is right, and the same amount—\$35.00.

Q. Will you show us the charge for that?

A. The charge is here on the distribution sheet.

Q. Against whom?

A. H. Bradley Martin.

Q. Why?

A. Because Abel was working for him that week.

Q. Let's look at the following week or the preceding week, whichever it is. Take the preceding week. Do you find Abel on that?

A. Yes.

Q. To whom is his pay charged there?

The Court:

He didn't sign that, did he?

A. No, he didn't.

Q. Who did sign for it?

A. The pay-master signed "holding"; Abel was probably out of town and the pay-master held it out for him, so as to send—

Q. Whose initials are these following the word "holding"?

A. J. M. Goring.

Q. That stands for the name of one of the men in your office?

A. Yes.

Q. To whom was that charged?

A. It was charged to Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on one of Mr. J. S. Phipps' Boats.

Q. Do you remember which one?

A. I believe on the Iolanthe.

Q. Will you look at the next week?

A. Yes; on the week of May 23rd.

Q. Show us how that was charged.

A. That was charged to Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on one of Mr. J. S. Phipps' boats.

Q. Which boat?

A. It is awfully hard to remember exactly; I think it was the Iolanthe that he was doing some work on during that time.

Q. Is there any memorandum you have from which you could refresh your recollection as to exactly which boat he was working on?

A. No, sir.

Q. I notice under this charge the name "C. Hart, boatman"; who was he and what was he doing at that time, if you remember?

A. Now, I am sure that Abel was working on the Iolanthe, because he and Hart did some painting on the Iolanthe together.

Q. So he was working on the Iolanthe that week?

A. Yes.

Q. His pay was charged to whom?

A. To Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on the Iolanthe; he did some maintenance work on the Iolanthe.

Q. Now on this summary, on the first page as well as on the second page, I find charges in September and October, 1934 to the Seminole Boat Company and others, Townsend and Bradley Martin, and one to Palm Beach Building Number 50, and one to Mrs. F. E. Guest Boats, and on the second page, a charge to Townsend Martin and Bradley Martin. Will you tell me what the routine was as to these and how it came about, and why the pay was so charged?

A. He kept his own time, and he came in and told this paymaster Goring at the end of each week who he had been working for, and Mr. Goring made up the payroll according to what Abel told him.

Mr. Matteson:

If Your Honor please, I object to the statement that he was working for the Seminole Boat Company. I take it that the witness means—

The Court:

It is a technical objection. I will sustain the objection. You can bring that out later.

(By Mr. Underwood):

Q. I will ask him the question directly, if I may: who kept Abel's time?

A. He kept it himself.

Q. In the making up of the payrolls, in the ordinary course of business, here did the paymaster get his information as to the person for whom Abel was working?

A. From Abel.

Q. Now will you see if you can find the payroll for the week of September 20th, 1934.

(Informal recess was taken for three minutes.)

Q. Mr. Riley, have you found the payroll for the week of September 20th?

A. Yes, sir.

Q. Does Abel appear there?

A. Yes, sir.

Q. Will you indicate the place? The name is in type-writing, Rupert Abel.

A. Yes, sir.

Q. Is that his first name?

A. Yes, sir.

Q. And did he sign there?

A. Yes, sir.

Q. Now will you show how that was charged?

A. It was charged to Seminole Boat Company.

Q. Does that appear on the distribution sheet?

A. Yes, sir.

Q. Was that made in the ordinary course of business?

A. Yes, sir.

Q. Do you recollect what work he was doing at the time?

A. Can't be positive about it; I think though that he was doing some painting in the bilges.

Q. On what boat?

A. On the Seminole.

Q. And now can you find the week—

Mr. Matteson:

Are these entries in the book, in his handwriting?

Q. Are those in your handwriting?

A. No, sir.

Q. Do you know whose handwriting it is?

A. This is the handwriting of J. M. Gorham.

Q. And who is J. M. Gorham?

A. He is an employe, or was then, of the Palm Beach Company office.

The Court:

Why did Captain Abel get a different rate of pay on that week?

A. Well, I think you will find that during that summer he got \$20 a week straight through.

The Court:

But he didn't work every day?

A. No he didn't work on Sundays. During the winter he got \$35 a week, working seven days.

The Court:

And in the summer \$20 a week?

A. And in this particular summer I think he got \$20.

Mr. Underwood:

If your Honor please, that is reflected on the summary; in that column you see a string of \$20, one above the other; one week apparently he got \$40; no reason for that.

Mr. Matteson:

May I ask all the captions on that page are in the same handwriting?

A. Yes, sir.

Q. All the captions are?

A. Yes, sir.

Q. Now, will you turn to the week of September 27; did he sign that payroll?

A. Yes, sir.

Q. As Captain?

A. Yes, sir.

Q. Will you show us how that was charged?

A. That was charged to Seminole Boat Company.

Q. He worked four days that week?

A. Yes, sir.

Q. Do you remember why that was?

A. Well, he drew only two, so he must have worked somewhere else for the other two days. He worked the other two days on Palm Beach Company's building number 50.

Q. And against whom was his work on these two days charged?

A. To Palm Beach Company; we have separate charges for our various buildings, so it was charged to the Palm Beach Building number 50, maintenance.

Q. Why building number 50?

A. Because that is the building he was working on.

Q. Were those entries with reference to that week, made in the usual course of business?

A. Yes, sir.

Q. Now will you turn to the week of October 11th?

A. Yes, sir.

Q. He got a full week's pay, \$20, that week?

A. Yes, sir.

Q. How was that charged?

A. It was charged, \$5 to J. S. Phipps Boats.

Q. The other \$15.

A. And \$10 to the Seminole Boat Company, and \$5 to Mrs. F. E. Guest Boats.

Q. Why was that pay split up that way?

A. Because those—he worked on J. S. Phipps Boats two days, he worked for the Seminole Boat Company three days, and for Mrs. F. E. Guest one day.

Q. Were those entries made in the regular course of business?

A. Yes, sir.

Q. I think that is enough for the moment, at least. Now who was it, over a period of years prior to the fire, who paid the bills for storage of the Seminole?

A. The Palm Beach Company.

Q. On whose authority?

A. On my authority.

Q. And who approved the bills?

A. I did.

Q. Did Mr. J. S. Phipps ever approve a bill for the storage of the Seminole?

A. No, sir.

Q. Are you familiar with the course of business in the payment of storage charges on the Iolanthe?

A. Yes, sir.

Q. Will you tell what that was?

A. Well, in the first instance I would approve the bill and then if Mr. Phipps was available I would submit that bill to him and he would approve it. In some instances he paid the storage with his own, his personal check; but in most instances it was paid by Palm Beach Company check.

Q. How about the Dorothy, Mrs. Guest's boat?

A. That followed the same course; I approved the bill, and I had an understanding with Mrs. Guest that,—what I mean is, that she knew what the rate was per month, and that I approved the bills and go ahead and pay them through the Palm Beach Company.

Q. I show you a file of four of Pilkington's bills and four checks, each covering storage on the Iolanthe. Will

you tell me whose checks that are, if the signatures—if you recognize the signatures.

A. Those are personal checks of Mr. John S. Phipps.

Mr. Underwood:

I may say for the record that those four have previously been marked Respondents' Exhibit K for identification.

Q. Then on those four instances Mr. John S. Phipps paid storage bills on the Iolanthe?

A. Yes, sir.

Mr. Underwood:

I offer these in evidence.

(The papers comprising Respondents' Exhibit K for identification were admitted in evidence and filed as Respondents' Exhibit K.)

Q. As far as you know, did Mr. John S. Phipps ever pay any storage bills on the Seminole, personally?

A. No, sir.

(Discussion was had off the record.)

Q. Mr. Riley, here are a number of Pilkington's bills which apparently include Palm Beach Company's vouchers. Will you look through those and see if you can identify those as Palm Beach Company's vouchers? I mean, the whole pile; that top bunch does not seem to be Palm Beach, it is Boulevard Mortgage Company.

A. Those are all Palm Beach Company vouchers.

Q. Those that bear "Palm Beach Company" in printing on them, are Palm Beach Company vouchers?

A. Yes, sir.

Q. Now can you look through here and find any Seminole Boat Company bills that bear your o. k.?

A. Yes, sir, here is one right here.

Q. That is a bill dated December 31, 1934?

A. Yes, sir.

Q. It covers charges on the houseboat Seminole?

A. Yes, sir.

Q. When did you put that o. k., JFR?

A. Prior to the time the check was drawn. Probably a week or ten days before.

Q. The check was drawn January 23, 1935?

A. Yes, sir.

Q. Now look at the next one underneath that; does that bear your o. k.

A. Yes, sir.

Q. That is for the week of January 31, 1935, and covers the Seminole?

A. Yes, sir.

Q. Now look at the next one, does that bear your o. k.?

A. Yes, sir.

Q. It covers the Seminole?

A. Yes, sir.

Q. Will you tell me whether or not that was the routine?

Q. Yes, sir, that is the routine.

Q. Did anybody else approve the Seminole Boat Company's bills for storage?

A. No one but me.

Mr. Underwood:

Now I will offer all this batch of Palm Beach Company checks and Boulevard Mortgage Company checks and Seminole Boat Company checks, which are previously described in the record, toward the end of the March hearing in some detail, giving the number of checks and the number of vouchers, as I recall; all being Pilkington's bills for storage, in some instances of the Seminole, in others of the Iolanthe, and perhaps the Dorothy and

possibly the Clip. Is there need to identify them any further?

Mr. Matteson:

With respect to these, I simply want to say that I reserve the right to comment on the weight and importance of the evidence, but I have no objection to them being marked as exhibits.

Mr. Underwood:

I see that the envelope has previously been marked Libelants Exhibit 75 for identification; I should have looked at that first.

The Court:

What will become of these at the conclusion of the hearing? Do you want to leave them in the record?

Mr. Underwood:

I think your Honor I will have to take the exhibits back to New York to write a brief on them.

The Court:

But I mean so far as the Court.

Mr. Underwood:

At the conclusion of the case I think on consent of all parties we will withdraw them so the Court files will not be encumbered with them.

(Discussion.)

The Court:

Without the necessity of putting in copies of each one?

Mr. Matteson:

It may be that the situation will be such that we would like to have the exhibits physically before the Court, when the Court comes to consider the case.

(Discussion.)

I am sure we can make satisfactory arrangements so the Court's files will not be unnecessarily encumbered.

(Libelants' Exhibit number 75 for identification, was admitted in evidence as an exhibit on behalf of Respondents, and marked 75 in evidence.)

Q. Now, N. Riley, you remember the fire on June 24, 1935?

A. Very well, yes, sir.

Q. What was the occasion of the engagement of, or the bargaining with John Thomas? Will you tell us what you had to do with that?

A. I think it was in April of that year, 1935, that Mr. John S. Phipps asked me if I could have made a rope netting, sort of a baluster, I suppose you would call it, or series of balusters made of rope, that went around the back end of a boat, from the rail down, and he wanted to have that made on his boat, the Iolanthe, and he asked me to see if I could find someone that could make it. So I didn't know of anyone, and I asked Abel if he knew of anyone. He said he wasn't sure but that he would see if he could find someone. And a while later, two or three weeks, he told me that he was sure that John Thomas could make such a netting, and that John Thomas was on the Keys fishing then, so I couldn't make any deal with him offhand. However he said that he thought John Thomas would make it for about,—I think it was twenty or twenty-five dollars. I wrote a letter,—Mr. Phipps was

not here at that time, so I wrote a letter to him and gave him the price and asked him if he would like to have it made; and he wrote back that he would.

Q. For what boat was that to be made?

A. Iolanthe.

Q. Did you ever deal directly with Thomas on that?

A. No, sir.

Q. Had Thomas ever been employed by any of the companies for which you from time to time performed services?

A. No, sir.

Q. There is on your payrolls I think the name of John Thomas?

A. Yes, sir.

Q. Can you tell us how that comes about?

A. He is a colored employe, has been with Mr. J. S. Phipps on his estate for the past ten or twelve years.

Q. That is not the same man?

A. No, sir.

Q. Now on the morning of June 24, 1935, you saw Abel?

A. Yes, sir.

Q. Did you have—issue any instructions to him?

A. Abel came in about nine o'clock on that morning, he had been doing some painting on the Iolanthe, the week previous and up to the day before. It was raining on this particular morning; he came in and said he couldn't do any painting. I said, "Well, it might be a good day to go down and inspect the Seminole, then, and if you will wait about half an hour I will go with you." So he left the office, went over to West Palm Beach on some errand, and telephoned from West Palm Beach that he had run into John Thomas, and that John Thomas would be leaving again for the Keys in a few days, and would I like to take him along with us so that he could see the rope netting on the back of the Seminole, and get

an idea of how to make one for the Iolanthe. I told him I thought that was a good idea, but since we didn't have anything but a coupe to ride in, I thought I wouldn't go down, the two of them could go. I told him to come back by the office, so he did, and I gave him a check made out to Pilkington for \$10. This check represented the difference between \$50 per month,—or \$50 check that I had sent Pilkington for storage on the Seminole and the \$60 a month which he had agreed to accept rather than \$75 a month that he had asked. Also I gave him a note to Mr. Pilkington asking him to allow Abel to go on the Seminole, and also to remove certain fishing tackle or equipment, also just before he left he asked me about gasoline for his car and I told him to go down and fill it up; and he said how charge it, I said "Seminole Boat Company"; and he left shortly thereafter.

Q. I show you check of Palm Beach Company, number 8297 in the sum of \$10 which has been marked Libelants' Exhibit number 59-A and is a part now of Exhibit 75. Can you tell me whether or not that is the check you gave Abel on that day?

A. Yes, sir, that is the check.

Q. How was that charged?

A. Charged to Seminole Boat Company.

Q. I show you paper which apparently bears no date, which has heretofore been marked Libelants' Exhibit 60; please tell us whether or not that is the paper you sent to Abel to give to Captain Pilkington?

A. Yes, sir, that is.

Q. Is that your signature?

A. Yes, sir.

Q. What was the material you speak of Abel was to bring back?

A. There was some glass bottom buckets, and grains and gaffhooks.

Q. Who owned that property?

A. Seminole Boat Company.

Q. Now before that conversation and those instructions to Abel that morning, had you had any conversation with Mr. John S. Phipps on that subject?

A. On what subject? You mean the—

Q. On the subject of Abel's going to Lauderdale, to the Seminole?

A. No, sir.

Q. Was Mr. J. S. Phipps in Palm Beach or thereabouts at that time?

A. No, sir.

Q. Do you know where he was?

A. I am not sure, I think at New York.

Q. So far as you know was there any fishing trip in prospect for Mr. J. S. Phipps at that time?

A. No, sir.

Q. Had you received instructions to do anything whatever in reference to any fishing trip for Mr. J. S. Phipps at that time?

A. No. None at all.

Q. Did you give Abel anything else besides the check and the note?

A. No, sir.

Q. Did you give him any keys?

A. No, sir.

Q. Did you have the keys to the Seminole, at Palm Beach?

A. No, sir.

Q. Mr. Riley, I show you Respondents' Exhibit S. Will you tell me when you first saw that?

A. Is this the original or the duplicate?

Q. You look at it and tell me. You might tell by looking on the back.

A. This is the original.

Q. Let me ask you then,—I will take that back; show you Respondents' Exhibit S-1. Tell me when you first saw that.

A. Between the first and tenth of July, 1935.

Q. Under what circumstances?

A. I was checking a bill, gasoline bill for this Palm Beach service station.

Q. Do you know R. C. Abel's signature?

A. Yes, sir.

Q. Can you tell me whether R. C. Abel's signature appears on that paper?

A. It does.

Q. Well, when you first saw that slip, will you tell me whether or not the words, beneath "R. C. Abel", the words "Seminole Boat Co." were on it?

A. They were, yes, sir.

Q. What did you do about that when you saw that paper?

A. I went down to see the owner and manager of the Palm Beach service station and asked him if he had the original.

Q. What is his name?

A. Mr. Hawkins.

Q. Is he in Palm Beach now?

A. Yes, sir.

Q. What is his business there now?

A. He is in the service station business.

Q. What is the name of the service station, and where is it?

A. It is the Royal Park Garage, located on County Road in Palm Beach.

Q. Is it a Shell station now?

A. Yes, sir.

Q. Now when you went down and put that question to him what did he produce, if anything?

A. He produced the original.

Q. I show you Respondents' Exhibit S. Can you tell me whether or not that is the paper he produced?

A. Yes, sir.

- Q. At that time?
- A. It is the paper.
- Q. Can you recognize the signature there?
- A. Yes, sir.
- Q. Is that Abel's signature?
- A. Yes, sir.
- Q. Can you tell me whether or not the words "Seminole Boat Co" were on that original when you first saw it?
- A. They were.
- Q. Did you write those words "Seminole Boat Co."?
- A. No, sir.
- Q. Did you see anybody write those words?
- A. No.
- Q. Mr. Riley, I show you Pilkington's Exhibit number 7 and ask you if you can identify those.
- A. Yes, sir, I can identify those.
- Q. What are they?
- A. They are gasoline tickets and slips, all signed by R. C. Abel.
- Q. I notice that some of them bear other words; for example, slips for January 2, 1935, bears up at the top "Chry coupe". Does that mean Chrysler coupe?
- A. Yes, sir.
- Q. Did that have a particular significance?
- A. Yes, that indicated the charge.
- Q. Can you tell me what the ordinary course of business was as to these gasoline purchases by Abel?
- A. When the bill came in the charges were made in accordance with the car that was written on the slip, in other words whoever owned that car was charged with it,—with the gasoline.
- Q. What had your instructions to Abel been on that subject?
- A. It was to indicate the car that he was putting the gasoline in.
- Q. Now I notice some of these do not bear any such indication. Was that a departure from the ordinary course of business, or was there some understanding about that?

A. Well, he had an allowance of five gallons of gas a week to put in his own car.

Q. To whom was that charged?

A. That was charged to J. S. Phipps.

Q. What was the routine?

A. Well, on those that have no name,—some of them do; I know this is for Chevrolet coupe, which was a car that belonged to him. Those were all charged to J. S. Phipps.

Q. Do I understand then that when he put no name on them, they were charged to J. S. Phipps; and when he designated his own car, they were charged to J. S. Phipps?

A. Yes, sir.

Q. When the charge was to be made otherwise, who—he was supposed to designate it on the slip?

A. Yes, sir.

Q. Getting back to the day of the fire, did you have any conversation with John Thomas before the fire?

A. No, sir.

Q. Did you give him any instructions either oral or in writing?

A. No, sir, I don't remember ever seeing John Thomas until after the fire.

Q. Now what was the first you knew of the fire?

A. The newspaper there in West Palm Beach telephoned the office and told me about it.

Q. What did you do?

A. Well, by the time I hung up the receiver, Mr. Pilkington was on the other line, and he told me about the fire.

Q. What did he say?

A. —and explosion. There was an explosion right after Abel and his friend went aboard; he wasn't positive that his friend went aboard at that time, but he said that he did, and that the whole boatyard was on fire.

Q. What did you do?

A. I left in about fifteen minutes or twenty minutes and went to Ft. Lauderdale.

Q. Did you see the Seminole when you got there?

A. Yes, sir.

Q. Was she burning still?

A. She was burning in the bowel and there was smoke still coming out of the engine room part, about amid-ship, I don't know just where the fire actually was coming from.

Q. Was she sunk yet?

A. No, sir.

Q. What time of day did you get there?

A. 3:50 I believe; 3:45, right around that time, nearly four o'clock.

Q. Did you see the Seminole off and on for the balance of that day?

A. Yes, sir.

Q. I show you photographs; do you identify that as a photograph of the Seminole taken that afternoon.

A. Yes, sir.

Q. Can you approximate the time when that was taken?

A. Well, it was either just before I left or just after I left.

Q. Did you see the photographer there?

A. No, sir, I didn't.

Q. Does that fairly represent all you saw?

A. Yes, sir.

Q. At about the time you got there?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 3-W without objection.)

Q. Just one more question about it: These white streaks across the picture there on the left, what are they?

A. That is the water from the fire hose.

Q. I show you another one, Mr. Riley. Can you state the same thing about that?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

(The said photograph was admitted in evidence without objection and marked Respondents' Exhibit 3-X.)

Q. Now these two exhibits 3-W and 3-X,—is the large boat in the right hand side of each of those pictures the Seminole?

A. What is left of her.

Q. I show you another picture; can you say the same thing of that?

A. I would say this picture was taken later than those.

Q. Taken the same day?

A. Yes, sir.

Q. The same afternoon?

A. Yes, sir.

Q. Is that the Seminole?

A. Yes, sir, this is right here.

Q. That photograph of a man without coat standing on the stern of the boat, is that the Seminole he is standing on?

A. Yes, sir.

Q. The boat beyond is apparently a car-float of some kind?

A. A barge.

Mr. Underwood:

I offer that.

(The said photograph was admitted in evidence without objection and marked Respondents' Exhibit 3-Y.)

Q. Mr. Riley, I show you another general view, was that taken that afternoon?

A. Yes, sir.

Q. Is the Seminole in there?

A. Yes, sir.

Q. The boat in the foreground, if you call that the foreground, is not the Seminole?

A. No, sir.

Q. But beyond her lies the wreckage of the Seminole?

A. Yes, sir.

Mr. Botts:

There are two men in there—there are three men in there; the hulk directly beyond the man in the middle is the hulk of the Seminole, is that correct?

A. Yes, sir.

Q. The boat in the foreground bears the name, San Cristobal?

A. Yes, sir.

Mr. Underwood:
I offer that.

Mr. Botts:

No objection.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 3-Z.)

Q. Now did you see Captain Pilkington there when you got there?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Did you have a conversation with him about the cause of the fire?

A. Yes, sir.

Q. What is your recollection of what he said?

Mr. Matteson:

If your Honor please, for what purpose is this offered?

Mr. Underwood:

All purposes. We offer it as an admission against interests, which is admissible to prove the facts stated by the person making the admission.

Mr. Matteson:

I object, if your Honor please, to any statement by Captain Pilkington at that time, on behalf of Libelants, as not binding on them in any way, shape or form; incompetent, immaterial and irrelevant.

Mr. Botts:

So far as I am concerned I assume that this is probably the same circumstance that Mr. Hawkins testified about; and I think it would be admissible as to my client, under the same circumstances as that would.

(Legal discussion was had.)

The Court:

I shall rule the evidence is competent as against Pilkington and not competent as against the Libelants; subject to a change of ruling on arguments presented, or of the Court's own motion, to make the ruling consistent.

Mr. Underwood:

I shall at the proper time, submit authorities on it.

(The preceding questions and answers were read.)

A. Well, about five minutes after I got to the boat yard I went in to see Captain Pilkington and he was in a room,—well, the office and the room were sort of all one. And I asked him if he had any idea what caused the fire. He said he couldn't understand; that Abel and his friend had gotten the keys at his house, and that he saw Abel go aboard and didn't see the friend go aboard, and that is about four or five minutes there was this explosion that started the fire, that burned the whole boat yard; that he just couldn't understand why there was an explosion because he knew there was no gasoline aboard.

Q. Was anybody else present at that conversation?

A. No, sir.

Q. Were you present with Captain Pilkington when Mr. Hawkins and Mr. Webber were there?

A. Part of the time, yes, sir.

Q. And did you hear Captain Pilkington make any statement about the cause of the fire, when Mr. Webber and Mr. Hawkins were there?

A. Yes, sir.

Q. Was there anybody else there?

A. I don't remember anyone else.

Q. Well, will you tell us what you remember hearing Captain Pilkington say at that time?

A. I remember him saying that he couldn't understand the cause of the fire, because he knew there was no gasoline aboard the Seminole.

Q. That was in the presence of Mr. Hawkins, Mr. Webber and yourself?

A. Yes, sir.

Q. Do you remember him saying anything else at that time?

A. No.

Q. Were you there all the time?

A. No.

Q. What were you doing about that time?

A. I had already talked to Pilkington; I took Hawkins and Webber in to meet him and I wasn't interested in listening to the reasons any more; I was trying to find where this fellow Thomas was; I had understood that they had taken him to a hospital, and I was trying to get information about him.

Q. Were you in the room all the time that Pilkington was talking to Hawkins and Webber?

A. No, sir.

Q. Did you do anything about Thomas that afternoon?

A. Yes, sir.

Q. Tell us what you did?

A. I went to the hospital, found him in a room with four other patients,—three or four other patients and talked to him as best I could. Of course he wasn't very coherent, and I also talked to his wife, who was there, and at the time I went in nothing had been done about his wounds, at all; he had a broken leg and a very bad cut back of his ear,—his head. And so I said something should be done. His wife wanted to give him a private room right away; so I telephoned Mr. Alley in West Palm Beach and asked him for authority to guarantee the hospital bills; that was what was holding the hospital up, they didn't know who was going to pay the bill.

Q. Did you get authority from Mr. Alley?

A. Yes, sir.

Q. What arrangement did you make?

A. I talked to the head nurse, or the owner of the hospital, I don't know which she was, and told her to give him a private room right away, to have a day and

night nurse; and I also talked to the doctor, Doctor Blount, and instructed him to get all that he needed, if he thought that he needed to consult about it, to bring in—some other doctor.

Q. Do you remember how many different times you talked to him that day or saw him?

A. That was the only time I talked to him or saw him.

Q. Did you attempt to discuss the origin of the fire with him?

A. I asked him if he knew what happened.

Q. I don't think you should be permitted to say what Thomas said. Did you attempt to discuss with him the origin of the fire?

A. I tried, yes, sir.

Q. Did you get anything coherent in the way of an answer?

Mr. Botts:

Objected to as calling for a conclusion of the witness.

(Discussion by counsel.)

Mr. Matteson:

This was at what time?

Q. Can you fix the time?

A. Between four-thirty and five o'clock.

The Court:

I think he can testify.

Mr. Botts:

I will withdraw the objection.

Mr. Matteson:

I have no objection.

(The question was read.)

A. No.

Q. Did you see him during the evening?

A. No, sir.

Q. Now it has been brought out Mr. Riley, before you testified here today, that following that time the Palm Beach Company has made various payments to doctors, nurses and others in connection with Thomas' injuries, and various payments to Thomas himself from time to time. Will you tell me whether or not you ever had any agreement with Thomas as to how much is to be paid to him, or how long he is to be paid, or anything of that sort?

A. No agreement at all; no, sir.

Q. Tell me whether Thomas has ever advanced and claim against the Seminole Boat Company or any of the Phipps family.

A. None whatever.

Q. Has he ever said that he had a claim?

A. No, sir.

Mr. Matteson:

Of course he is speaking, so far as his knowledge goes.

Mr. Underwood:

To him, or within his hearing, that is right.

Q. And so far as you know is there any agreement of any nature with Thomas as to compensation for his injuries?

A. None at all that I know of.

Q. Did you make any arrangements about the recovery of Abel's body?

A. Yes, sir.

Q. Tell us as briefly as you can what you did as to that.

A. Well, on the day of the fire, that night, after the fire department couldn't do anything else, I attempted to

get located a pump, to pump out the hull of the Seminole, so that we could get the body.

Q. Were you able to do that that night?

A. I wasn't, no.

Q. Now did you employ a diver?

A. I did the next day, yes, sir.

Q. That was Carl Holm?

A. Yes, sir.

Q. What did he do?

A. Well, he did some diving for about two or three hours,—about three hours, I think.

Q. Did you make any agreement with him?

A. Yes, sir.

Q. What was the agreement?

A. The agreement was that I would pay him \$10 an hour.

Q. How much did you pay him?

A. I paid him \$50.

Q. Cash or a check?

A. Cash.

Q. And he did not succeed in recovering the body?

A. No, sir.

Q. Then did you engage anybody else to do any work on the Seminole?

A. Yes, I engaged Captain West, who had a barge and a pump.

Q. Before you did any of these things, did you have any conversation or instructions from John S. Phipps?

A. No, sir.

Q. Did West bring his pump?

A. Yes, sir.

Q. And he pumped on the Seminole?

A. Yes, sir, he pumped out the Seminole. That was the second night after the fire.

Q. That was Tuesday night?

A. Yes, sir.

Q. And were you there when she floated?

A. Yes, sir.

Q. About when was that?

A. About 1:30 or 2:00 o'clock in the morning.

Q. Were you there the following morning, Wednesday morning?

A. Yes, sir.

Q. And briefly what transpired that morning?

A. Well, at about 2:00 o'clock the night before, they decided not to pump any more. Went into Ft. Lauderdale, and came back about six in the morning, five-thirty or six. And they still hadn't started pumping again, and I sat in the car and went to sleep, about, I reckon six-thirty or seven, Carl Holm woke me up, told me he had found indications of the body. And then I arranged to have the body removed.

Q. Were you there when pumping stopped early on Wednesday morning?

A. Yes, sir.

Q. And were you there during the time between the beginning of the pumping job and the time pumping stopped early Wednesday morning?

A. Yes, sir, I was there.

Q. And where were you during that time?

A. I was in the car.

Q. Were you on the boat at all?

A. No.

Q. The body was removed on Wednesday morning?

A. Yes, sir.

Q. After the removal of the body did you see Holm do anything with reference to the parts of the wreckage of the Seminole?

A. Yes, sir, I did.

Q. What did he do?

A. I saw him use a hack saw, I think it was a hacksaw, or a file, to mark some valves that he had taken off the boat.

Q. Did he remove some part of the boat?

A. Yes, sir.

Q. Did anybody ask your permission to remove those parts?

A. No, sir.

Q. Did you give anybody your permission to take anything off the Seminole?

A. No, sir.

Q. Now, what were you doing when you saw Holm using a hacksaw?

A. I was talking with Schlappi and another man, I don't know what his name was, on the porch of Captain Pilkington's house.

Q. Who had arranged with Schlappi to come down?

A. I had.

Q. Did you talk with Mr. John S. Phipps before you did that?

A. No, sir.

Q. What did you bring Schalappi down for?

A. Captain Holm suggested that I have him come down, because Schlappi knew the various outlets in the hull of the Seminole, and could help them by pointing them out so they could stop them up before they started pumping.

Q. Did you engage Holm for any purpose other than to dive for Abel's body?

A. No, sir.

Q. Did you request of him a report on any subject?

A. No, sir.

Q. Did you have any discussion with him about a report on any subject?

A. Not on that day, no, sir.

Q. Well, when was it, and what was it?

A. On Wednesday I went down to Ft. Lauderdale, and as I was leaving I saw Holm and he called me over and said "Would you like to read a report on—my report on

the accident?" I said, "Yes, I would." And I read the report. It was addressed to Mr. Miller; and after I finished, he asked me if I would like to have a copy of it and I said I would. About four or five days after that I received a copy in the mail, from him.

Q. I show you Respondents' Exhibit number 1, ask you whether or not that is the receipt you got from Carl Holm for the \$50 you paid him?

A. Yes, sir, that is the receipt.

Q. I show you Respondents' Exhibit number 2 and ask you whether or not that is the report you got from Holm.

A. Yes, sir, that is the report.

Mr. Underwood:

I will say for the record, those pencil marks on there are of my own making.

Q. Now do you know whether Mr. Alley is an officer of the Seminole Boat Company?

The Court:

Is that in evidence. (Discussion.)

Mr. Underwood:

The receipt apparently is not marked for identification, but the report is.

The Court:

Do you offer it now?

Mr. Underwood:

No, sir.

(The last question was read.)

Q. Did you know that in April 1931 when you received certain instructions from him that you have mentioned?

A. Yes, sir.

Q. Were there any other corporations or persons for whom you performed services at Palm Beach, beside the Palm Beach Company?

A. Yes, sir.

Q. And has a list been prepared of those?—I show you Respondents' Exhibit 3-S, is that the list?

A. Yes, sir, this is the list.

Q. Will you tell us for the record the nature of the duties you perform for the other companies and individuals indicated in that list,—not in detail; but in a general, brief way.

A. I didn't get the first part of that question.

(The question was read.)

A. Well, I did have charge of maintaining buildings, developing property; I have done some landscaping on various developments, and on the estates; I managed and handled the automobiles of the corporations and individuals, boats of the corporations and individuals. That pretty well covers it if you don't want to go into detail.

Q. Now, Mr. Riley, Captain Pilkington has testified that after the Seminole was laid up in April, 1935, you telephone Pilkington and asked him whether the Seminole had been put under the shed, and that he said that she not been and that he had no keys with which to get in her, and that you said you would get the keys. Will you tell us whether or not such a conversation took place?

A. Yes, sir.

Q. What was the substance of it?

A. I telephoned him and asked him if the Seminole had been put under the shed, and he said, No, that it hadn't,

that for one thing he had to arrange his boats so he could get the Seminole in for permanent berth,—in her permanent berth. And he also said that he didn't have the keys and I says "Well, I will arrange right away to get them to you; I don't have them either." And immediately upon—after talking with him, I called Miami and talked to Mr. Webber, and asked him if he would get the keys up to Mr. Pilkington right away.

Q. Do you remember when that was?

A. I am not sure, I would say two or three days after the boat was put there for storage.

Q. Now from that time on until the time of the fire, did you have any discussion with Captain Pilkington about keys?

A. None.

Q. Neither he nor Mrs. Pilkington asked you about keys?

A. No, sir.

Q. Either orally or in writing?

A. No, sir.

Q. Did you see Captain Pilkington between the time of that conversation and the time of the fire?

A. No, sir.

Q. Did you see Mr. Pilkington in that interval?

A. Yes, sir.

Q. Did she say anything about keys?

A. No, sir.

Q. What was the substance of the subject under discussion when you saw her?

A. About the rate that they were going to charge on the Seminole for storage.

Q. You were discussing the Seminole?

Q. But nothing was said about keys?

A. No, sir.

Q. Did you ever say in substance to Captain Pilkington that you would be down to inspect the Seminole at any particular interval?

A. No, sir.

Mr. Matteson:

Just a minute. You are referring to some specific statement of Captain Pilkington's as to what Mr. Riley said. I think you ought to refer to specific statements there instead of just in a general way.

(Discussion between counsel.)

Mr. Matteson:

I have no objection.

A. No, sir.

Q. Captain Pilkington testified that on one or two occasions Abel had removed gasoline from the Seminole by means of a can, and that he had told Abel not to do that, and refused to let Abel work on the boat because he had done it; and that he told Abel to tell you that Abel could not work on the boats because he had done it; and then that you phoned and told Pilkington to put the Iolanthe outside of the shed so she could be brought to Palm Beach, where Abel could finish the work. Did any such thing occur?

A. I never heard of that, sir.

Q. Did you ever have a conversation with Captain Pilkington about Abel's taking gasoline out of one boat and putting it in another, or taking gasoline out of the Seminole?

A. No, sir.

Q. Mrs. Pilkington has testified that she saw you on the Tuesday or the Thursday before the fire, to return a \$50 check; is that the fact?

A. Yes, sir.

Q. Can you fix the date?

A. No, sir, I can't.

Q. Now she testified that on that occasion you told her that Mr. Phipps didn't want to pay \$75; is that a fact?

A. No, sir.

Q. Now, Mr. Patten,—do you know Captain Patten?

A. Yes, sir, I have seen him up there; I saw him here in Court.

Q. He has testified that he had a conversation with you on the day after the fire, in which you told him that you were Mr. John S. Phipps' secretary; is that the fact?

A. No, sir.

Q. He also testified that you said that if you had not been so busy you would have come down with Abel and the explosion would not have happened; is that right?

A. I don't recall talking to anybody at all; if I did talk about the fire I probably said there that I was very glad I didn't come down; because I was.

Q. Did you ever tell anybody you were Mr. Phipps' secretary?

A. Never; I never have been Mr. Phipps' secretary.

Q. Mr. Riley, I show you another photograph; can you tell me whether that is a photograph taken of the Seminole after the fire?

A. Yes, sir.

Q. Do you know about when that was taken?

A. In August, I believe, 1935.

Q. Could you identify the place in the engineroom where that is?

A. It is on the forward bulkhead of the engineroom, on the starboard side.

Mr. Underwood:

I offer that.

(Said photograph was admitted in evidence without objection and marked Respondents' Exhibit 4-A.)

Q. I show you another photograph; was that taken at the same time?

A. Yes, sir.

Q. Is this bulkhead here on the left, the forward bulkhead of the engineroom?

A. Yes, sir.

Q. That photograph is looking from the port to the starboard side?

A. Yes, sir.

Mr. Underwood:

I offer that.

Mr. Botts:

No objection.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 4-b.)

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Matteson:

Q. Mr. Riley, would you mind taking this sheet of paper and writing your name at the top?

(Witness writes on paper.)

Now would you mind writing "Seminole Boat Company" underneath that?

(Witness writes.)

Will you do it once more for me.—I ask to have this marked for identification.

(Said paper was marked Libelants' Exhibit 107.)

Q. Now I would like to go through these vouchers, Mr. Riley, taking up the file, the latest file, of checks dated in '35; the first bill of Captain Pilkington in that file was dated December 31, '34?

A. Yes, sir.

Q. I take it that that "o. k. JFR." in the lower right hand corner was written by you?

A. Yes, sir.

Q. Now I will ask you about the words "Seminole Boat Co." to the left, was that written by you or not?

A. No, that is not written by me. I think by J. M. Gorham.

Q. He was one of the men in the office?

A. Yes, sir.

Q. What position did he hold?

A. He was paymaster; he drew all the checks and did quite a bit of the bookkeeping.

Q. What was his relation with Mr. Anderson, who has been referred to?

A. Well, he was Mr. Anderson's assistant.

Q. Now, while we are at this point in the trial, this check 7402 is the lower half of a document that was all in one piece to begin with.

A. That is correct, yes, sir.

Q. And the sheet immediately under it is made at the same time as the original check by carbon, is it not?

A. Yes, sir.

Q. What do you call the upper half of the check, that is torn off? Is there a name for it?

A. No, we don't have any name for it; it is principally to tell the person who receives the check what bill we

are paying. In other words we give this description on the original, so that a person being paid will know what bill is being paid.

Q. So on the upper half of the check you write a description of the item which is being paid?

A. Yes, sir.

Q. And that is transmitted by carbon to the duplicate and triplicate copies, is that right?

A. Correct.

Q. Now I call your attention to the fact that on this duplicate copy of the words "Charge Seminole Boat Company, \$50." appear to be in original typewriting?

A. That is correct, yes, sir.

Q. They do not appear on the original voucher?

A. No, sir.

Q. So that the document that went to the payee would contain a description of the item which was being paid, and attached to that, a check in payment of the item, but will contain no reference to the initial charge with respect to the item?

A. That is correct.

Q. All they would know about that, that they had gotten a check from the Palm Beach Company for that item?

A. That is correct.

Q. And the nature of the charge was reserved and put on the duplicate and triplicate copies, and that was entirely a matter of pure internal office record?

A. Yes, sir. There are two very good reasons for that, if you would like to know them.

Q. Well, that is all right. Now referring again to this duplicate voucher 7402 I see that the lower portion, what is the carbon of the upper half, there are various headings under which initials appear.

A. Yes, sir.

Q. Under "Extensions checked", what are those initials there?

A. That is J. M. Gorham. That is the man that signed this, made the charge.

Q. The same man that wrote the "Seminole Boat Co." on the bill?

A. Yes, sir.

Q. Those initials are supposed to be J. M. G., I think?

A. Yes, sir.

Q. And are these the same initials under the word "entered"?

A. Those are the same.

Q. And under the word "Certified correct" what initials are those?

A. E. J. Anderson.

Q. And under "Approved for payment" what are those initials there?

A. Those are E. J. Anderson, R. C. Alley and H. W. Robbins.

Q. In each case the initials appear?

A. Yes, sir.

Q. And not the full names. Who is H. W. Robbins?

A. H. W. Robbins in our New York office, and he signs main account checks to reimburse our paymaster account checks.

Q. So this HWR is put on after it reaches New York?

A. Yes, sir.

Q. You make duplicate, and triplicate copies, do you?

A. Yes, sir.

Q. And each copy—which copy do you send to New York?

A. The duplicate; we keep the triplicate.

Q. So that this particular document that is here, apparently came from the New York files, is that right?

A. Yes, sir.

Q. Now from the initials appearing on this particular slip, it would appear that when the document was prepared, that is, when the voucher was prepared, the extensions were checked by J. M. Gorham?

A. Yes, sir.

Q. I suppose that would be the first operation?

A. Yes.

Q. Before anything else was done?

A. Yes, sir.

Q. Then which would come next, the "Certified correct" or "approved for payment"?

A. Well, the "extensions checked" and the "certified correct" would be the next, and then "approved for payment", and then "Entered" would be the last.

Q. "Entered" would be the last?

A. Yes, sir.

Q. So the initials JMG, under the word "Entered" indicates Mr. Gorham is the man who actually made the entries in the books, is that right?

A. Yes, sir, that is correct.

Q. This Pilkington bill dated January 31, '35, the initials "O. K. JFR" are yours, is that right?

A. Correct.

Q. On this bill February 28, '35, the initials "O. K. JFR" is that your writing?

A. Yes, sir.

Q. And the "Seminole Boat Co."

A. Is my writing.

Q. In each case it is your writing?

A. Yes, sir.

Q. On this bill of Mr. Pilkington dated May 1, '35, is written "O. K., JFR." Is that yours?

A. Yes, sir.

Q. Is "Seminole Boat Co." yours?

A. That is my writing, yes.

Q. And here is a bill dated December 31, 1930, this contains some writing, this bill relates to storage on the Iolanthe?

A. Yes, sir.

Q. This writing, "Too much; write and try to get better rate. JSP." Is that Mr. Phipps' writing?

A. Yes, sir.

Q. And the initials "JFR" are yours?

A. That is my writing.

Q. And the "O. J. J. S. P." is Mr. Phipps?

A. Right.

Q. Who is this, "J. S. P. Boats"?

A. That is my writing, that is the charge.

Q. Now there is one that was marked Pilkington Number 5 for identification, a bill dated April 30, '31; "Charge Seminole Boat Company" written in ink; is that yours or someone else's?

A. I think that is mine; yes, I am sure it is mine.

Q. Now here is a bill dated March 31, 1931, in which there is a note at the bottom "Have talked to Pilkington" and at the bottom signed "JFR"; is that all your writing?

A. Yes, sir.

Q. That relates to the Iolanthe, I believe?

A. Yes, sir.

Q. Now on this bill of May 31, '31, written in pencil, "Charge Seminole Boat Co.", is that yours?

A. Yes, sir.

Q. I notice on this bill of May 31, there is an item relating to v21215 and after it is written the word "Clip". Are they the same boat?

A. Yes, sir.

Q. Is the word "Clip" in your own handwriting?

A. Yes, sir.

Q. And the initials "JFR"?

A. Yes, sir.

Q. And the quotation "O. K. J. S. P." is Mr. Phipps'?

A. Yes, sir.

Q. This bill of June 30, '31, is "Seminole Boat Co." written by you?

A. Yes, sir.

Q. And June 30, '31, "Charge J. S. P. Boats" is that written by you?

A. Yes, sir.

Q. August 31, '31, the bill, "Charge Seminole Boat Co." is that yours?

A. Yes, sir.

Q. On September 30, '31, "Charge Seminole Boat Company", in pencil, is that yours?

A. Yes, sir.

Q. And this August 31, '31, "Charge J. S. Phipps Boats" is that yours?

A. I believe so. This is a little larger writing than I usually do, but I think that is mine.

Q. On this bill dated August 31, '31, someone has written in the lower left hand corner "J. S. Phipps Boats"; do you know whose that is?

A. I am not positive; I think it is the writing of—I think the same person wrote that that signed the initials "EE", but I am not sure of it.

Q. Who is that?

A. She was the stenographer, Ethel Edwards.

Q. And this bill of October 31, '31, "Charge Seminole Boat Co." in ink is yours?

A. Yes, sir.

Q. Now in Exhibit 75, on this bill, December 31, '33, someone has written, "Mrs. F. E. G. Boats"; who is that?

A. That looks like J. M. Gorham's handwriting to me.

Q. The initials are yours?

A. Yes, sir.

Q. The bill of December 31, '33, "Seminole Boat Co." in pencil, is that yours?

A. No, sir; I think J. M. Gorham, I would rather not pass on his signature,—mean his writing. I think that is who it is.

Q. And on this bill dated January 31, '34, "O. K. JFR", and "Seminole Boat Co." is that part yours?

A. That is my writing.

Q. And down below "Seminole Boat Co." again, is that your writing?

A. No, sir, I think it is Gorham's.

Mr. Botts:

Make a memorandum, please. "Seminole Boat Co." that is nearer the top of the page is the writing that the witness identified as being his; and that towards the bottom of the page, that is not.

Q. This bill February 28, '34, "O. K. JFR"; "Seminole Boat Co." is yours?

A. Yes, sir.

Q. And bill on March 31, '34?

A. I think that is mine, yes, sir; must have slipped when I made that letter F; it doesn't look like my F.

Q. May 31, '34, the writing is yours, is it, in ink?

A. Yes, sir.

Q. The same as to June 30, '34?

A. Yes, sir.

Q. And on July 31, '34, is the writing in pencil yours?

A. Yes, sir.

Q. On this July 31, '34, the "O. K. JFR" and immediately under it, "Seminole Boat Co." is that yours?

A. I am not sure of the "Seminole Boat Co." I wouldn't like to say definitely on that.

Q. The writing at the left of the page, the initial "J"?

A. That is Gorham, J. M. Gorham.

Q. And on August 31, '34, "O. K. JFR"; Seminole Boat Co., is that yours?

A. Yes, sir.

Q. September 30, '34, "O. K. JFR" is that yours?

A. Yes, sir.

Q. Is the "Charge Seminole Boat Co." yours?

A. Yes,—no, sir.

Q. That is Gorham, is it?

A. That is.

Q. On October 30, '34, the "O. K. JFR" is yours?

A. Yes, sir.

Q. "Charge Mr. J. S. P. Boats" is that yours?

A. I think that is Mr. Gorham's.

Q. Same on October 31, '34?

A. Yes, sir.

Q. November 30, '34, is the handwriting in pencil yours?

A. Yes, sir.

Q. And two bills of that date, one immediately following is the writing in pencil on that page yours?

A. Yes, sir.

Q. I don't want to take the time to go all through these, but there are only two more. Here is a note at the bottom of this one, this bill dated December 31, '31, which reads, "Seminole Boat Co.; we think this price should be at most \$65. J. F. Riley"; is that all your writing?

A. Yes, sir.

Q. On January 31, '32, is the "Seminole Boat Co." in pencil, your writing?

A. Yes, sir.

Q. On February 29, '32, "Seminole Boat Company" is that your writing?

A. Yes, sir.

Q. March 31, '32?

A. Yes, sir.

Q. On April 30, '32?

A. Yes, sir.

Q. On September 30, '32, the initials, and the "Seminole Boat Co." in pencil, is that all yours?

A. Yes, sir.

Q. October 31, '32, is the "Seminole Boat Company" yours?

A. Yes, sir.

Q. Now on this bill August 31, '32, there is some writing at the top of the page, "Can you get reduction on storage on 'Iolanthe' and Seminole from September on?" Is that Mr. Phipps' writing?

A. I can't identify that.

Q. Mr. Phipps has placed his initials on it, "O. K. JSP."

A. Yes, sir.

Q. You are familiar with Mr. Phipps' writing?

A. Yes, sir, I have seen his writing, but I am not a handwriting expert.

Q. Well, from your recollection of the circumstances and incidents and your familiarity with his writing.

A. It looks like it.

Q. It appears to you to be Mr. Phipps' writing?

A. Yes, sir.

Q. And this at the bottom, in pencil, "J. S. Phipps Boats".

A. That is my handwriting.

Q. Here is one on November 30, '32, "O. K. J. F. R."; Seminole Boat Co." that is yours?

A. Yes, sir.

(And thereupon the hearing was recessed until 2:00 o'clock p. m. of the same day.)

May 11, 1939, 2:00 P. M.

Afternoon Session.

The Court:

All right, gentlemen; you may proceed.

1910 Thereupon JAMES F. RILEY, JR., a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

By Mr. Matteson:

Q. Mr. Riley, you were telling us how you came to see this exhibit, Respondents' S-1, the carbon of the gasoline

ticket. I think you said you were checking over the accounts in the Palm Beach office when you saw that for the first time?

A. Yes, sir.

Q. Was that your usual practice?

A. Yes, sir.

Q. Of course there were a great many of these slips signed from time to time, so that you would see a good many of them coming over your desk, in the office at Palm Beach?

A. Yes, sir.

Q. And these tickets invariably, I take it, covering the charge for gas were against the account of J. S. Phipps, is that right?

A. Not all of them.

Q. There may have been some additional designation on them, but they all carried the same J. S. Phipps at the top?

A. In that particular account, yes.

Q. You mean at this Palm Beach Service Station?

A. Yes, sir.

Q. So that the account of the Palm Beach Service Station was in the name of John S. Phipps?

A. That particular account was; there were other accounts; there was one account in the name of Palm Beach Company, and there was another account in the name of H. C. Phipps. I believe that is all.

Q. You mean all at the Palm Beach Service Station?

A. Yes, sir.

Q. So there were at least three accounts there, one of which was the account of J. S. Phipps?

A. Yes, sir.

Q. And the gasoline in this case was charged to the account of J. S. Phipps at that station?

A. Yes.

Q. Now, Mr. Riley, what was the system with respect to the billing of the accounts; did they send you a bill first of every month?

A. Yes, sir; they sent the statement and attached the signed slips to that statement.

Q. And I take it that what they attached were the carbon copies, is that right?

A. Yes, sir.

Q. And that was the usual system?

A. Yes, sir.

Q. When you got the bill the first of the month you would get a statement and attached to it were the carbon copies of gasoline slips aggregating the charge made on the bill?

A. Yes, sir.

Q. Now, you are quite clear about that, I take it?

A. Yes, sir; that is the way it was handled.

Q. You did not get two slips; you just got the carbon with the bill?

A. Either the carbon or the original; sometimes they sent the original and sometimes the carbon; most of the time we got the carbon.

Q. You didn't get both copies; you didn't get the original and the carbon?

A. No, sir.

Q. Which was the usual practice; there must have been some practice for them to send you the carbon or the original?

A. The usual practice was the carbon; I saw on one or two occasions—I have seen the originals come in with the bills.

Q. But practically always it was the carbon?

A. Yes, sir.

Q. It was not the practice, you say, to get the slips in duplicate; that is, the original and the carbon with the monthly statement?

A. No, sir.

Q. I notice that there was an error made on this slip in the addition; in the first place, it was originally totaled as being \$2.24, and that was scratched out and underneath

there is written "\$2.19". Do you know anything about that?

A. No.

Q. Had that change been made when you first saw the slip for the first time?

A. I don't remember the change; I didn't notice it.

Q. I will show it to you (handing document to witness).

A. Yes, it had been made.

Q. Before you saw it?

A. Yes, sir.

Q. So, when you saw the carbon, as I understand it, you went over to the service station and saw the original there?

A. Yes, sir.

Q. When you saw it for the first time it was just in the form in which we have it here?

A. Yes.

Q. New Exhibit 7 here, consisting of a lot of gasoline slips, about 46 in number, which were produced by Mr. Underwood,—were they taken from your files there at the Palm Beach office?

A. Yes, sir.

Q. When you paid the bill, I take it, that the original slip would still remain with the service station, is that right?

A. Yes; in other words, they would keep one.

Q. In other words, they kept one in their records and you only got one at any time?

A. Yes, sir.

Q. I call your attention to these 46 slips which have been produced here, and I call your attention to the fact that, with the possible exception of three, they are all originals. Do you notice that?

A. Yes.

Q. Everyone is an original; you recognize that, do you not?

A. Yes.

Q. And of these three exceptions it appears that two of those at least were originals; in other words, it appears to me that these two are originals and that one is a carbon?

A. I don't know; they look like carbons to me, too.

Q. At least there are only three possible carbons in the entire 46, is that right?

A. That is right; I didn't look at every one.

Q. I tried to fan them out so that you can see all of the backs. You can identify the backs by the carbon on the back of the original?

A. Yes; they are all originals.

Q. So that would seem to be just the reverse of the ordinary course of business as you explained it to me, wouldn't it?

A. Yes. Of course they may have had a different man, may have had various bookkeepers; one might have handled it one way and another another.

Q. These slips all cover a period within a year of the time of the fire, don't they?

A. I am not sure of that absolutely.

Q. I think that is correct. Well it would appear that out of these 47 slips, with the possible exception of three, that this one, Exhibit S-1 is the only case in which the carbon came to you, is that right?

A. That is as I remember it; that I saw the carbon.

Q. Now, Mr. Riley, what was the date, as near as you can fix it, when this bill of the Palm Beach Service Station was paid?

A. We usually pay our bills between the 10th and the 25th of the month; my guess would be it was somewhere in that neighborhood.

Mr. Matteson:

Have you those bills handy, Mr. Underwood?

Mr. Underwood:

Which ones?

Mr. Matteson:

The Seminole Boat records or what purports to be the records of the Seminole Boat Company.

(By Mr. Matteson):

Q. I show you this voucher, No. 97, a part of Phipps' Exhibit "Z", showing you an entry under August 9th, Palm Beach Service Station, gas, \$2.19. That apparently represents the payment of this bill; is that right?

A. Is that the amount of the bill?

Q. That was the amount of the check, \$2.19.

A. Yes; that seems to be right.

Q. And the date of that payment is indicated as August 9, is that right?

A. Yes.

Q. Is that approximately the date on which you first saw this slip?

A. No, sir.

Q. Does that enable you in any way to fix the approximate date?

A. No.

Q. At least it was not later than August 9th, is that right?

A. That is right.

Q. Now, did you have some photostatic copies of these slips made when you discovered them?

A. Yes, sir.

Q. I find an item in here "Seminole Boat Company account, petty cash, photostatic copies of gas bill, \$2.90; is that right?

A. That is correct.

Q. So that you had these photostats made and charged them to the Seminole Boat Company, did you?

A. Yes, sir.

Q. Why did you do that?

A. Well, I considered it a direct charge to the Seminole Boat Company.

Q. I mean, why did you have photostats made of that at all?

A. Well, I wanted more of them for the files in case I needed them at any time.

Q. You never had obtained photostats of any others, had you?

A. No.

Q. Why did you obtain photostats of this?

A. Oh, just as I stated before, I wanted to have them in my files.

Q. Did it occur to you at the time that the authenticity of this document might be later questioned?

Mr. Underwood:

May we have the time in that question fixed?

Mr. Matteson:

At the time he had the photostats made.

A. No, sir.

Q. You had not thought of that?

A. No, sir.

Q. Did you regard these slips at that time as an important piece of evidence in response of this case?

A. Well, I regarded it as an important piece of evidence, but not particularly in this case, because there wasn't any case at that time, I don't believe.

Q. After the fire on June 24th which originated on the Seminole you realized at once that there was a serious possibility of there being claims made, did you not?

A. I didn't at once, no, sir.

Q. It never entered your mind that there would be claims arising out of that disaster?

A. Not for the first two or three days.

Q. You don't say that you got these slips and made photostats of them within two or three days after the fire, do you?

A. No.

Q. You want us to understand, Mr. Riley, that your testimony is that at the time you found these documents and made photostats of them you had no thought whatever of any claims being made arising out of this fire?

A. No, I don't want you to understand that.

Q. I am asking you what your state of mind was at that time?

A. Well, I thought that if there was an occasion of someone making a claim that would be good evidence.

Q. You thought that these would be important evidence in the event any claim was made, is that right?

A. That is correct.

Q. And the importance of such evidence would of course be, if it had any, to show that on the day of the fire Mr. Abel was an employee of the Seminole Boat Company, wouldn't it?

A. Yes, sir.

Q. So that in the event any claim was based on the action of Mr. Abel it would appear that the claim was against the Seminole Boat Company and not anybody else, is that right?

A. That is correct; he was working for the Seminole Boat Company.

Mr. Matteson:

I move to strike out the answer, if your Honor please.

The Court:

I think it is a voluntary statement and not responsive to the question. I will grant the motion to strike that last sentence.

Q. Then the importance of the evidence, if any, would be against the interest of the Seminole Boat Company and in favor of the interest of anybody else that would be involved, is that right?

Mr. Underwood:

If your Honor please, I object to this witness being asked to consider the importance of evidence in this case. He is not permitted apparently to give a full and complete answer, and that is one reason I make my objection.

The Court:

I think the question is well taken. I will overrule the objection.

A. The only way I can answer that is to say that the reason I thought it was important was to show that this man was working for the Seminole Boat Company.

Q. To whom would that be of importance?

A. I can't say that it would be of any importance to anyone personally, but just in case of any sort of suit that might develop.

Q. It didn't occur to you at that time that if any liability arose out of the actions of Mr. Abel on this occasion could be shown to be arising out of employment with the Seminole Boat Company that that would be protective of the interests of the stockholders or anyone else that might be involved?

Mr. Underwood:

I object to that unless the time is fixed. The question says "at that time". I do not understand what time is meant.

Mr. Matteson:

It is understood that all of these questions refer to the time that he had the photostats made of these tickets.

A. Will you read that question?

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

Read it again.

(Thereupon the question was re-read by the Reporter as above recorded.)

A. Of course at that time Abel had a widow and I thought it was good evidence to show that he was working for the Seminole Boat Company that day.

Q. Now let me ask you the question this way: did you think it would be of any advantage to the Seminole Boat Company as a corporation to have this evidence and the demonstration of its authenticity?

A. No, sir.

Q. On the contrary it would be detrimental to the interests of the Seminole Boat Company as a corporation, would it not?

Mr. Underwood:

I object to that as argumentative.

The Court:

Well, it is in a sense argumentative, but it goes to the reason why he did things. I think it is within the realm of cross examination. I will overrule your objection.

Mr. Matteson:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Yes, I suppose it would; I don't know.

Q. Then may I ask you, Mr. Riley, why you charged the expense of procuring these photostats against the Seminole Boat Company?

A. It seemed like the right thing to do at the time.

Q. For whom were you acting when you did this?

A. When I charged the photostats?

Q. Yes; when you procured the photostats?

A. I don't know that I thought of who I was acting for then.

Q. In other words, you have many capacities in your position at the Palm Beach Company and it is sometimes difficult to determine in which capacity you are acting, is that right?

A. Well, I suppose I know who I am working for at times. There are a lot of activities in the company.

Q. Now in 1931 you received your first instructions in respect of the Seminole, is that right?

A. Not the first ones.

The Court:

Are you leaving that subject matter right now?

Mr. Matteson:

I do not think of anything else at this time.

By the Court:

Q. What did you have photostated?

A. Gasoline slip.

Q. Just one of them—

A. Yes.

Q. Did it cost \$2.90 to get that one photostated?

A. \$2.90.

Q. It cost \$2.90 to have that one slip photographed or photostated?

A. I think we had more than that; I don't remember the number, your Honor.

Q. You don't recall now whether you had a large number of copies of the one slip made or whether you had a good many slips photostated?

A. I think the original was the one that was photostated, this gasoline slip, that is the only gasoline slip that

was photostated but how many pictures I had made I don't remember.

Q. As I understand it, Mr. Riley, this slip came to your office first along with a bill for the total amount of gasoline purchased at that station during the preceding month?

A. Yes.

Q. And that was for June?

A. Yes.

Q. I reckon that bill came in along the first of July, is that right?

A. Yes, sir.

Q. When did you have the photostats made?

A. I don't remember exactly; some time during July; the latter part of July, I think.

Q. Did I understand your testimony this morning that immediately (I don't mean immediately but before you took any action on the matter of paying that bill) you went down to see the manager of the station?

A. Yes, sir.

Q. Why did you go there?

A. Because I wanted the original; I wanted to see if he had it.

Q. Do I understand it now that your best recollection that you got along with the bill that was rendered the 1st of July the copies?

A. Yes, sir.

Q. You wanted to see if the original was in existence?

A. Yes, sir.

Q. And that is the reason you went down there?

A. Yes.

Q. Did you get it from the station at that time?

A. Yes, sir.

Q. When you went back to your office you had the original and the copy both?

A. I might have gotten it the next morning; the man might have had to look it up.

Q. After your visit to the station and you came back to your office you had both the original and the copy, whether it was that day or the next day?

A. Yes, sir.

Q. Did you get any other slips down there that day?

A. Any other originals?

Q. Yes.

A. No, sir.

Q. Just that one?

A. Yes.

Q. You are quite sure that these 46 odd tickets first came into your possession along with the bill rendered?

A. Yes, sir.

Q. And you didn't get them in connection with this photostat down at the service station?

A. No, sir, I didn't.

The Court:

That is all I care to ask.

(By Mr. Matteson):

Q. With respect to the time when you got this slip, how long after it was it that you had it photostated?

A. I can't remember exactly; it was the latter part of July, I think, but I cannot be positive.

Q. Who was it, if anyone, that instructed you to have the photostats made?

A. I believe Mr. Alley did.

The Court:

Where are the photostatic copies now?

The Witness:

I don't know exactly. I think there is one in one of those files there.

The Court:

What did you do with them at the time?

The Witness:

I put one in our file; I turned over one or two to Mr. Alley, and it seems to me those were all; I don't know whether there was over three or four made.

(By Mr. Matteson):

Q. Now I think, Mr. Riley, you stated that it was in 1931 that you got some instructions from Mr. Alley with respect to the Seminole?

A. Yes, sir.

Q. At that time Mr. Alley was head of the Palm Beach office, was he not?

A. Yes, sir.

Q. By the way--on June 24, 1935, was he still the head of the Palm Beach office?

A. He was still the manager of the Palm Beach Company; he had moved his office and had a law office of his own, and I was in physical charge of the Palm Beach office.

Q. But you still recognized him as the manager of the office?

A. Yes, sir.

Q. Now, Mr. Alley, as the head of the Palm Beach office, was generally the representative of the Phipps' interests in Palm Beach, was he not?

A. Yes, sir.

Q. And in addition to being the head of the office of the Palm Beach Company he performed many functions in connection with the various corporations in which the Phipps were interested and the various individual members of the Phipps' family, was he not?

A. What date are you speaking of now?

Q. I am talking about 1931, but I suppose it would apply to both dates.

A. I am not familiar entirely with what Mr. Alley's duties were at that time.

Q. Well you recognized him in 1931 as your superior officer?

A. Yes, sir.

Q. And that was because he was in charge of the Palm Beach Office?

A. Yes, sir.

Q. And it wasn't unusual for you as his subordinate in that office to take instructions and orders to do various things for members of the Phipps' family or for any of the corporations that they were interested in?

A. No, sir.

Q. In fact it was customary for you to do so?

A. Yes, sir.

Q. Your employment and your salary came entirely from the Palm Beach Company, did it not?

A. Yes, sir, so far as I know.

Q. You never have been in the employ of the Seminole Boat Company, have you?

A. You mean has the Seminole Boat Company ever paid me any money?

Q. Yes.

A. No.

Q. So that by reason of any pay or salary connection there has never been any reason why you should do anything for the Seminole Boat Company?

A. No, excepting in that Mr. Alley told me to work with them and it was a part of my duties if he told me to do it.

Q. So that when Mr. Alley told you to perform certain functions with respect to the Seminole Boat Company it wasn't because he was an officer of the Seminole Boat Company that you were required to comply, but it was because Mr. Alley is the head of the Palm Beach office and had the right to give orders, is that right?

A. I would say it was both. Of course I knew he was an officer of the Seminole Boat Company.

Q. And also in the employ of the Seminole Boat Company at that time?

Mr. Underwood:

I object to that as calling for a legal conclusion.

Mr. Matteson:

I will withdraw it.

(By Mr. Matteson):

Q. You received no salary nor any pay that would put you under any obligation to the Seminole Boat Company as such?

A. No, sir; I never received any money from the Seminole Boat Company.

Q. But you were under necessity, by reason of your employment and your payment by the Palm Beach Company, to take his order as manager of the Palm Beach Company; that is correct, it is not?

A. As my manager, yes.

Q. Now I think that you said that your introduction to Captain Pilkington was by Captain Bryant?

A. Yes, sir.

Q. And that that was in 1931?

A. I think so, yes, as near as I can remember.

Q. Well, during 1931 at any time did Mr. John S. Phipps go to the Pilkington Yard with you?

A. Not with me, not that I remember.

Q. Your introduction by Captain Bryant was purely verbal, was it not?

A. Yes.

Q. You probably are aware, in connection with this case, that there had been a designation in writing to Captain Pilkington of Mr. Huff as the man in charge of the boats, including the Seminole?

A. Yes.

Q. Was there any written communication to Captain Pilkington superseding that employment and appointing you in his place, as far as you know?

A. Not that I know of; no, sir.

Q. Now at that time, 1931, the Iolanthe and the Dorothy were stored at the Pilkington Yard for certain periods, were they not?

A. I am not sure but I think they were, though I am not certain that the Dorothy was owned by Mrs. Guest in 1931; I won't say for sure about that; I don't remember.

Q. There were three boats, either of Mr. J. S. Phipps or other members of the Phipps' family stored there during that year, were there not?

A. I don't remember.

Q. I notice that the bill here for storage on the Iolanthe during January, 1931 and for the month of February, 1931—

A. Yes.

Q. And for the month of April, 1931?

A. Yes.

Q. For the month of March, 1931?

A. Yes.

Q. For the month of May, 1931?

A. Yes.

Q. And during the same month part of the time the Clip was stored there?

A. Yes, sir.

Q. Here is a bill for June storage on the Iolanthe and the Clip in 1931?

A. Yes.

Q. And again in July on the Iolanthe and the Clip?

A. Yes.

Q. In August for the Iolanthe and the Clip?

A. Yes.

Q. And here is one in October for the Iolanthe and the fishing boat; I suppose that is the Clip?

A. Yes.

Q. So all three of his boats were there during that year, is that right?

A. The Iolanthe, the Clip and the Seminole, you mean?

Q. Yes.

A. I don't remember about the Seminole. I know these were there because we paid bills for them.

Q. You were in charge of the Iolanthe and the Clip as well as the Seminole?

A. Yes, in a way.

Q. Throughout that year, or at least from the time of your introduction by Captain Bryant?

A. Who?

Q. Bryant?

A. Yes. I employed Captain Bryant.

Q. I am saying that from the time of your introduction by Captain Bryant you were in charge of all three of these boats, is that right?

A. Yes.

Q. What time of the year was it that you were introduced by Captain Bryant, do you recall?

A. As I recall, sir, it was in the spring; I don't know just what month.

Q. Around April?

A. It would be entirely a guess; I don't know.

Q. I show you this bill for storage on the Seminole in April, for storage on the Seminole from April 20th to April 30th. It seems to be the first bill with respect to the Seminole in that year. I suppose that indicates that the Seminole went in storage at Pilkington's that year about April 20th, is that the fact?

A. That is what it would indicate, yes.

Q. Was that when Captain Bryant introduced you to Captain Pilkington?

A. It must have been after that date, because the Seminole was already there.

Q. And had been there for some time?

A. I don't remember how long.

Q. Was that the first time that you had been to the Pilkington Yard?

A. That is the first time that I remember, yes.

Q. Was Captain Bryant's introduction sufficient to put you in charge of all of these boats insofar as Pilkington was concerned?

Mr. Underwood:

I object to that as calling for a legal conclusion, your Honor.

The Court:

I think that is subject to that objection.

(By Mr. Matteson):

Q. In Captain Bryant's introduction of you to Captain Pilkington was anything said about the Iolanthe or the fishing boat Clip?

A. I don't remember definitely whether there was or not.

Q. How was your authority to deal with the Dorothy and the Clip communicated to Captain Pilkington, do you know?

A. No.

Q. You have no recollection of that at all?

A. No.

Q. Captain Bryant was the Master of the Seminole at that time, was he not?

A. I believe he was, yes.

Q. As I understand it, Mr. Riley, your introduction by Captain Bryant was the only communication to Captain Pilkington dealing with your authority in respect of the Seminole of which you have any recollection?

A. Yes, sir.

Q. Or either of the other boats, for that matter?

A. Yes.

Q. Where is the office of the Palm Beach Company located?

A. Located in the Plaza at Palm Beach.

Q. It is now known as Bessemer Properties, Inc.?

A. Yes.

Q. That is since 1937?

A. 1937, yes.

Q. It is the same office?

A. Yes.

Q. And the same organization substantially?

Mr. Underwood:

I object to that if it means to go into the reorganization of the corporation. If he means the physical plant, I have no objection.

Mr. Matteson:

That is what I intend.

A. That is correct; the same employees.

Q. What does the office there consist of?

A. Building?

Q. How many rooms and where located?

A. We have one main office and a couple storage rooms and three private offices.

Q. Who occupies the private offices?

A. I occupy one; Mr. H. C. Phipps has one when he is down, and Mr. J. S. Phipps has one when he is down. During the summer, when they are not here, we very seldom use the two offices except for files.

Q. Now in the winter of 1934-35 do you recall what period Mr. J. S. Phipps was in Palm Beach, approximately?

A. It will have to be approximate; I don't know exactly.

Q. All right.

A. Probably from around Christmas-time until the 15th of April or maybe the 1st of May.

Q. But when Mr. Phipps is in Palm Beach does he transact his business at the office of the Palm Beach Company?

A. Mr. Phipps does not transact his business himself. He is retired. If you mean personal bills here, I will say that he okeyed some at his home and he okeyed some at the office; some of his checks were drawn at his home and some were drawn at the office.

Q. When did he retire?

A. I do not know, sir.

Q. Well, during this period of 1934-35 was he in the office daily?

A. This is a guess. He might be in every day for one week and the next week he wouldn't come in at all; you never knew how to figure that.

Q. But he is there frequently, is he not, when he is in Palm Beach?

A. Yes.

Q. You are called upon to do a great many things in company with Mr. J. C. Phipps, are you not?

A. Yes, I have been in his company and have been in Mrs. Guest's company and have been in Mr. H. C. Phipps' Company. I don't know that one dominates the other; I work for all of them.

Q. It is fair to say, is it not, that Mr. John S. Phipps comes to the office a good deal more frequently than Mr. H. C. Phipps?

A. No, sir.

Q. I want to ask you about Mr. J. S. Phipps' estate; where is that located?

A. His home?

Q. Yes.

A. On North County Road, Palm Beach.

Q. How large a place is that?

Mr. Underwood:

I object to this; it is wholly immaterial in this case.

Mr. Matteson:

I think it is quite important in connection with the relations between Mr. Riley and Mr. Phipps, and I think we are entitled to know. Mr. Riley has testified that he has had many duties in connection with Mr. Phipps' estate. I want to find out what those duties are and how extensive they are, and how close his relations are with John S. Phipps.

The Court:

I do not see what the size of the home has to do with that.

Mr. Matteson:

It might have to do with the amount of detail in connection with it.

The Court:

I want to allow a fair amount of latitude in cross examination, but I really do not see the materiality of that, however, I will let you proceed.

Mr. Matteson:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

Q. I don't care about the number of acres, but just give us an idea.

A. It is 26 acres. Do you want to know the size of the house?

Q. No.

A. All right.

Q. What duties have you had in connection with the estate?

Mr. Underwood:

May we have the time fixed?

Mr. Matteson:

I am talking about the period in 1934-35 season.

A. Well, I suppose I have, you would call it, business management, and I think that covers it.

Q. You have the business management of Mr. John S. Phipps' estate in your charge?

A. Yes, sir.

Q. And that is true when he is away as well as when he is there?

A. Yes, sir.

Q. You are from time to time called upon to represent Mr. Phipps in various matters in connection with the estate and in connection with other of his personal affairs, is that right?

A. Yes.

Q. You act for him?

A. I act for him with his permission, yes.

Q. Of course.

A. Yes.

Q. And in his absence you have authority to deal with his matters coming up, routine matters coming up, in connection with his personal affairs?

A. You mean his estate; the home there?

Q. Yes.

A. Yes.

Q. Now I suppose in that connection you have on occasion been required to deal with strangers on behalf of Mr. John S. Phipps?

A. With strangers?

Q. I mean with people that you have not met before and who may not know who you are.

A. If you mean salesmen who come in that would like to sell the estate something, or something of that sort, yes.

Q. I do not necessarily mean anyone coming to the office; in fact, I assume there must be occasions in connection with Mr. Phipps' affairs when you have to approach others, is that right?

A. I don't think it is true except in that I do talk to people who want to sell things to the estate, and that's about all; when it comes to his own personal business I do not have anything to do with that.

Q. There are occasions when you purchase things for the estate and have to go out and purchase things for the estate?

A. Yes, sir.

Q. When you do deal with someone on the outside with spect to some matter that concerns Mr. Phipps personal how do you describe yourself; how do you identify yours as representing Mr. Phipps?

A. I usually identify myself as representing the estate because the Palm Beach Company through me or through the Palm Beach Company sort of handle affairs of that sort for the Phipps Estate as well as others.

Q. When you say you represent yourself as representing the estate, what do you mean?

A. I mean that the name of his place is Casa Vendita, and I am in a sense business manager of Casa Vendita, but not the business manager of John S. Phipps.

Q. You never have indicated to anyone under any circumstances that you were the representative of John S. Phipps?

A. No, sir.

Q. Whether you described it as secretary or manager or any other capacity?

A. No.

Q. Now with respect to June 24, 1935—

A. Just a minute. May I change one thing there in the last answer I gave?

The Court:

Yes.

A. There are other properties that are owned by Mr. John S. Phipps, and of course I manage those other properties also. He has not confined me just to his one home or estate.

Q. I appreciate that. I meant my question to be general and to apply to any representation of Mr. Phipps with respect to any of his interests. Do I understand that you have never on any occasion indicated to anyone that you were acting as the representative of John S. Phipps?

A. No.

Q. As a matter of fact in many dealings you have representing him?

A. I have represented the properties that he owned, yes; maybe that is considered as representing him. If you mean though, that if someone comes in and wants to borrow some money from Mr. Phipps that I can receive him and say, "Yes, I can loan you the money,"—that is not it at all.

Q. I am not suggesting that at all.

A. All right.

Q. Getting back to June 24, 1935, I understand from your testimony this morning that the decision with respect to going to Ft. Lauderdale was made on the morning of that date?

A. That is correct.

Q. And it was made because it was raining on that day?

A. Yes.

Q. So that there was no possible way that Abel could have known the day before or the evening before that he was going to Ft. Lauderdale on June 24th, is that right?

A. Except that we had talked about it several times within the last three or four weeks previous to the time he actually went down there, and I said, "As soon as we had the opportunity"; I told him as soon as I had an opportunity I would go and would have him go with me and he knew that I had it in mind.

Q. But there was no reason other than the general possibility of such a thing happening at some time in the future that would be any basis for his understanding the night before that he was going to make a trip to Ft. Lauderdale the following day as far as you know?

A. As far as I know he didn't know that he was going to make the trip to Ft. Lauderdale on the 24th.

Q. You had said nothing to him about it?

A. Not for that date.

Q. Now with respect to this fishing tackle; for what purport was that required?

A. It was just to go in storage; we always stored the glass bottom buckets and gaffhooks during the summer, because they were left out on the upper deck of the Seminole, and of course out in the weather, and we just stored them. Usually they were stored in Miami, but this particular trip they apparently forgot to leave them there.

Q. Well, how do you know that?

A. Mr. Hawkins told me that.

Q. Is it a fact that preparations were then being made for a fishing trip on the Iolanthe?

A. No.

Q. Where was the Iolanthe at that time?

A. The Iolanthe was at Mr. J. S. Phipps' dock.

Q. Palm Beach?

A. Yes.

Q. Was this equipment sometimes used in the Iolanthe?

A. No, sir, the Iolanthe had its own equipment.

Q. Isn't it a fact that the Martins were going to make a fishing trip at that time, about that time?

A. Not that I remember; no, sir.

Q. Were the Martins in Palm Beach at that time, or were they expected?

A. I don't believe they were.

Q. You don't know?

A. No, I don't know. Yes, I do, too; I know they were not in Palm Beach.

Q. Were they expected?

A. No, I don't know that.

Q. Now from the spring of 1931 I understand that you were in complete charge of the Seminole.

A. When it was in Palm Beach or at Ft. Lauderdale, yes.

Q. And you had received instructions to make regular inspection of the Seminole, had you not?

A. Not regular inspections. I received instructions to make inspections from time to time.

Q. And is it a fact that when the Seminole was in storage at Ft. Lauderdale, you visited her there approximately once a month?

A. Well, it depended on whether I could get there or not; I tried to get down there once a month, but I don't think I did; probably the trips were six weeks apart.

Q. On this occasion of June 24, 1935, she had been in storage there for approximately something over two months, had she not?

A. I don't remember when she was put in; I think that is about right; it was about the 15th of April or a little after that she was put in storage.

Q. You had not visited her during that time, had you?

A. No.

Q. And other times when she had been there you had been down there and made inspections from time to time?

A. Yes.

Q. And when you made these inspections did you go through the boat?

A. Yes, sir.

Q. Of all her parts?

A. Well, on most occasions I did. Some occasions I didn't go into the bilges at all; it depended on whether I had a Captain with me or not.

Q. What do you mean by "bilges"?

A. The bilges down in the hull.

Q. You mean on some occasions you didn't look under the floors?

A. That is right.

Q. But except for that, whenever you went, you went all through the vessel, is that right?

A. Except in the engineroom.

Q. You didn't go in the engineroom from time to time?

A. I have been in the engineroom when she was in commission; I don't believe I ever have when she was in storage.

Q. You say you were charged with the duty of making the inspections of the Seminole while she was at Ft. Lauderdale and you never did inspect her engineroom?

A. Well, the window along the companionway was always open, and I stuck my head down in there and looked around. That is about as good an inspection as I could make of the engineroom.

Q. You never climbed through the window or went in that engineroom?

A. Yes, on a number of occasions.

Q. On the occasion of some of these inspections?

A. I am not positive that I was ever in the engineroom on an inspection, but if the Captain was along with me it is very possible that I did go along with him.

Q. You didn't always have a Captain with you, of course?

A. Not always, no.

Q. Most of your inspections were made with the Captain, weren't they?

A. I would say 75 per cent of them, yes.

Q. On these occasions you say that you never went into the engineroom?

A. I don't believe I have ever been in the engineroom unless a Captain was with me.

Q. But you did inspect the engineroom, by looking through the window?

A. Yes, sir.

Q. What was your experience before you went with the Palm Beach Company; what previous experience had you had?

A. I had been a timekeeper for a building contractor there in West Palm Beach. Previous to that I worked for a brick and tile manufacturing company.

Q. Your experience then, I take it, had been almost entirely in construction and real estate management?

A. Yes. Of course I had not had much of that at that time; at the time I went with the company.

Q. Do you mind telling us your present age, Mr. Riley?

A. Not a bit. Thirty-seven.

Q. As far as expenditures with respect to the Seminole were concerned, you told us that you had a mental limit of two or three hundred dollars.

A. Yes.

Q. And the only time that you exceeded that amount was with the personal approval of the stockholders?

A. Yes, sir. That is on one job; of course if you are doing painting and doing plumbing work, reupholstering furniture and remaking mattresses, all of those things together might go to make more than two or three hundred dollars, but for one certain job, like working on motors, running to more money than that I would always get permission.

Q. And you did have the management of the other family boats as well as the Seminole?

A. Yes, sir.

Q. That includes the Iolanthe and the Clip and the Dorothy, is that right?

A. Yes. I had the management with the approval of those who owned them.

Q. Of Course. And they approved everything that was done on them.

A. Yes.

Q. And that was all because of your employment by the Palm Beach Company and your obligation to respond to personal calls of members of the Phipps family?

A. Yes, but I want to get myself straight on that, though: There is quite a difference between management that I had of the personal boats and the management I had of the Seminole, because every little thing on Mrs. Guest's boat and every little thing on Mr. Phipps' boat had to be approved by them before the work was done.

Q. In other words, your authority with respect to the Seminole was somewhat broader than with reference to the others?

A. Yes; much broader.

Q. You were telling us about a conversation that took place with Captain Pilkington when Mr. John S. Phipps was present, where there was a discussion of rates and a statement by Mr. John S. Phipps with respect to the advisability of moving the boats to Gulfstream. You gave us something of an interpretation of what was said. I wish you would tell me as exactly as you can the exact language that Mr. J. S. Phipps used on that occasion.

A. I think I gave that this morning, as well as I can remember.

Q. Will you give it to us again?

A. He started—he walked along and heard the gist of the conversation, and he said that he just couldn't pay too much for storage of boats, and that I had decided, meaning me, that unless he continued to make the rate

\$50 a month on the Seminole, that I was planning to take the boats to Gulfstream.

Mr. Underwood:

Read that answer.

(Thereupon the following portion of the previous answer was read by the reporter, at which point the reading of the answer was interrupted by the witness: "He walked along and heard the gist of the conversation and he said that he just couldn't pay too much for storage of boats—")

The Witness:

That is wrong. I didn't say he said that he just couldn't pay—

The Reporter:

I read it as I recorded it.

Mr. Underwood:

I am asking the witness to correct the answer as incorrectly read by the reporter.

Mr. Matteson:

I want to say that it was read just exactly as I heard it.

Mr. Botts:

And exactly the way I heard it.

Mr. Underwood:

Not the way I heard it.

The Court:

The witness will be the judge. Commence all over and state it again.

The Witness:

Well, he heard the gist of the conversation and said that we couldn't afford to pay too high rates on the storage of boats, and that unless Captain Pilkington kept his rates as they were that I (meaning me) had thought it best to take the boats to Gulfstream and store them there.

Mr. Underwood:

Again I am not clear, your Honor, as to just what went in. May I have that answer read?

(Thereupon the preceding answer was read by the reporter as above recorded.)

The Court:

Does everybody understand the answer now?

Mr. Botts:

I understood both.

The Court:

You may proceed.

Q. Mr. Riley, that makes three times now you have said that Mr. Phipps said "that I (meaning me, quoting you) had a certain idea. I do not suppose that Mr. Phipps would be so ungrammatical as to use the word "I" in referring to you. What I want to know is exactly what he said.

A. That is what I am trying to give you, but after all of these years—after all, this was five years ago, and of course you know—

Q. He did not refer to you as "I"; that is your—

A. That Jim had decided to take the boats to Gulfstream.

Q. You think that is what he said?

A. Either Jim or Mr. Riley; I don't know which.

Q. And when he said that he was referring to all of the boats there were in storage or accustomed to be stored there.

A. Yes. There were only two at that time, as I remember it; the Seminole and the Iolanthe.

Q. Now referring to these payrolls. I hold in my hand the summary with respect to the amount paid to Mr. R. C. Abel. He was employed as a boat Captain, was he?

A. They called him that on the payroll.

Q. He was so described throughout the payroll as a boat Captain?

A. Just "Captain" I would say.

Q. And he was the registered Master of the yacht Iolanthe, was he not?

Mr. Underwood:

I object to that as not the best evidence. The registration papers, if your Honor please, are filed in the Customs House, and they are temporarily suspended from time to time, and I don't know whether this witness knows whether the registration papers were in effect, and I think the basis of his knowledge ought to be—

The Court:

If he knows, I think it is all right to ask him.

The Witness:

I don't know.

Q. Well, it is a fact, is it not, that his employment was principally in connection with the Iolanthe?

A. No, I wouldn't say that.

Q. If we say principally in connection with the Iolanthe and the Clip, would that cover it?

A. Well, he worked on those boats more than any other boats, yes.

Q. And he was employed regularly, week in and week out at a monthly wage, was he not?

A. No, sir, he was employed on a weekly rate.

Q. Well, he was employed week in and week out on a weekly rate?

A. Yes.

Q. And his wages were uniformly charged to J. S. Phipps except at such times as he worked on boats for business of others?

A. His wages were charged to J. S. Phipps when he was working for J. S. Phipps, yes.

Q. And that was something over ninety-five percent of the time, wasn't it?

A. I haven't figured it out.

Mr. Underwood:

I think that is a matter of calculation and that we can agree upon it. If you want an accurate percentage we can figure it out in dollars and cents.

Mr. Matteson:

I want to bring out the fact that it was only on rare occasions that his wages were charged to anyone else.

Mr. Underwood:

That depends on the definition of the word "rare". I do not see that that gets us anywhere, your Honor.

The Court:

Well, the facts speak for themselves. We can make that calculation, if necessary.

A. Most of the charges on here are to J. S. Phipps.

Q. Now there were one or two occasions, three I guess, where his wages were charged to the Seminole Boat Com-

pany. Can you tell us and refresh your recollection by referring to payrolls, if you wish; for instance, during the week of September 20, 1934, his wages of \$20 was charged to the Seminole; can you tell us what he was doing that week?

A. To the best of my recollection he was painting around the hull of the boat.

Q. I see that a part of the following week, September 27, 1934, was also charged to the Seminole; was that a part of the same job?

A. I am not positive; it was either painting in the bilges or doing other maintenance work on the boat.

Q. And again in the week of October 11, 1934, \$10.00 was charged. Can you tell us what he was going then?

A. He was doing some work in connection with the maintenance of the boat.

Q. And those were the only occasions from January, 1934 down to June 24, 1935, that any of his wages were charged to the Seminole Boat Company?

A. Yes, sir, that is, from these payrolls, unless there were some checks drawn to him and charged to the Seminole Boat Company.

Q. Now there is a voucher here representing the payment of the final installment of his wages, which vouchers is a part of Phipps' Exhibit 3-V, which final voucher shows the payment of \$60 to Mrs. R. C. Abel. That was the final installment of Captain Abel's wages, was it not?

A. Yes, sir.

Q. And that was paid on June 29, 1935?

A. Yes, sir.

Q. Do I understand that this memorandum that is attached to it, which is in your handwriting, and on which the charge was made at the time the check was made out?

A. Yes, probably the same day the check was made out.

Q. So that your decision to charge the Seminole Boat Company with \$5.00 for one day's wages was made five days after this fire, is that right?

A. Yes.

Q. And when you made up this memorandum—

A. I won't say my decision was that day; that is the day I wrote it up.

Q. That is the date this written memorandum was made?

A. Yes, sir.

Q. And at that time did you have in mind the same thing that you had in mind when you had photostats made of Exhibits S and S-1; that the fact of his employment by the Seminole Company on that date might be a very important matter for somebody?

A. No, sir; this was done just in the regular routine of business. I made out these slips from time to time, and I charged the man for whatever job he was working on.

Q. You stated that the vouchers showing payments to Abel, which constitute the exhibit I was just showing you, Exhibit 3-V, were all that you could find in your office. Does that mean that the vouchers are missing for some of the weeks that are described in the summary of the payrolls; there is no voucher covering the entire employment as indicated by the payroll.

A. No, I don't mean that; I think that they are all here; I am not positive; I will have to check them by weeks to see.

Q. They should all be here?

A. Yes.

Q. In other words, you should have in your office a voucher for every payment which has been made by the Palm Beach Company, is that right?

A. Yes.

Q. Now, Mr. Riley, Schlappi was also engineer of the Iolanthe, wasn't he?

A. Yes, sir. He acted as engineer of the Iolanthe on occasions.

Q. During 1934 and 1935 was the Iolanthe continuously at Palm Beach?

A. I don't believe so. I think the Iolanthe was in storage in Ft. Lauderdale until the spring of 1935, but I would have to look through the records and make sure of that.

Q. Well, in the 1934 vouchers there are vouchers, month by month for the Iolanthe up to November, and the November bills says "Out November 25". Does that refresh your recollection as to when the Iolanthe left the Pilkington yard?

A. That says that she left on November 25th.

A. It says it left here on November the 25th; I am not sure where it was until around the first of May; I know it was at Palm Beach around the first of May, 1935.

Q. Well, there was a period during March and April when it appears from the testimony already given that Schlappi was working on the Seminole. But can you tell us from the payrolls except for that period, where he was working?

A. Schlappi was employed to work on the Seminole, I think, sometime in March and he stayed on the Seminole until after the trip that was made to the keys, was finished up. Before that employment on the Seminole he wasn't employed by us, that I can remember.

Q. So his name should appear, if he was employed, on these payrolls?

A. No, sir; he was never paid on payrolls; he was always paid by check.

Q. Always paid by check?

A. Yes, sir.

Q. Did you produce a series of checks here?—Now the first voucher that appears here in 1935 for the payment of wages, is this one dated May 6, 1935; is that right?

A. Yes, sir.

Q. Now that covers wages here over quite a period.

A. Yes, sir.

Q. There is, Seminole Boat Company, twenty-two days; Mr. J. S. Phipps Boats, thirty-one days; would that be on the Iolanthe?

A. That is either on the Iolanthe or it is during the time that Mr. Phipps had the boat on a rip,—when he himself took it on a trip.

Q. That was the last trip that the boat made, in April 1935?

A. Yes, sir.

Q. Is there any way that we can get behind this voucher to find the exact periods that are covered by those different charges?

A. No, sir, there is not, because Schlappi gave me this time, when I made this out; he had kept the record of the days that he spent on various jobs and he gave this to me and I wrote it out and then had the check drawn for it. In other words there is no payroll or item, slip or anything that would show the dates covered by these numbers of days?

Q. The only memorandum is the yellow sheet attached in your writing?

A. Yes, sir.

Q. And that does not give any dates?

A. No, sir, I don't believe it does. No.

Q. He didn't give you any memorandum that would be more specific than that?

A. No, he gave me that verbally and I wrote it down.

Q. When Schlappi was employed by Mr. Phipps, it was usually as engineer of the Iolanthe, is that it?

A. Well, I would say he worked about half and half, on the Seminole and on the Iolanthe. He worked some for Mrs. Guest.

Q. I think, from my notes when you were referring to this voucher, you said something about a trip on the Iolanthe later.

A. Yes, sir.

Q. What was that trip?

A. That was a trip to Dimini I believe; yes, to Bimini.

Q. When was that, do you know?

A. That was made after the Seminole came back to storage at Ft. Lauderdale; it was around the 25th of April, would be my guess.

Q. And Schlappi acted as engineer on that trip?

A. Yes, sir.

Q. Now as I understood your testimony you said you had one man to make up the payrolls; who was that man?

A. At that time it was J. M. Gorham.

Q. Covering what period?

A. Well, of course he had help, someone else would do it when he was on vacation, but he did it practically entirely from about 1929 through 1935.

Q. During 1934 and '35, how many people outside of the Phipps were in the office at Palm Beach?

A. Four.

Q. And who were they?

A. There was a stenographer, Mr. Anderson, Mr. Gorham and myself. We might have had two stenographers, I don't remember for sure.

Q. You refer to one whose initials were BB, this morning; is that one?

A. EE; no, she wasn't there in 1934 and '35.

Q. Who was there in the office in '34 and '35?

A. Bess Higgins; I believe her name was Bess McDougall at that time. She has been married.

Q. I think you said that when you went to the hospital in Ft. Lauderdale, you were required to guarantee the payment of Thomas' hospital expenses there?

A. Yes, sir.

Q. And did you sign the usual form of agreement for the hospital at that time?

A. I don't remember whether I signed an agreement, or just—I think I just telephoned the lady in charge and told

her I would see her later, and I don't remember whether I signed anything or not.

Q. Well, in whose name did you give that guarantee?

A. I don't know whether I told her personally, or whether I used the company name. If I used the company name, I used Palm Beach Company. I think I just told her personally; she took my word for it for some reason.

Q. Did you tell her who you were?

A. Yes, sir, I told her who I was.

Q. And who did you tell you were?

A. I told her I was with the Palm Beach Company.

Q. You spoke of seeing Carl Holm marking certain valves with a hacksaw, and making disposition of them: And you were asked if you gave permission for those actions on his part. You said that you did not. You did not make any objection either, did you?

A. No, sir; I was not interested in valves at that time at all.

Q. You spoke of some conversation with Captain Pilkington, in which I think you said that he told you that there was no gasoline on the Seminole. You knew that that information was erroneous, that there must have been gasoline on the Seminole at that time, didn't you?

A. I knew there must have been something, because of the explosion.

Q. And you knew, as a matter of fact, all of the gasoline could not be removed from the tanks of the Seminole, didn't you?

A. No, sir, I didn't know it.

Q. You wrote a number of letters to Captain Pilkington, or the Pilkington Boatyard, that appear in the file here; and I note that you invariably signed your own name alone, writing on the stationery of the Palm Beach Company, or else on one occasion,—on two occasions you signed Palm Beach Company, under your name. That

was the way you wrote to Pilkington, was it, using your name of the name of the Palm Beach Company.

A. Yes, sir; I see I have used the name of the Palm Beach Company here.

Q. Most of the time you simply signed your own name?

A. Yes.

Q. This occasion of this conversation with Pilkington about rates, when something was said about taking the boats away, was not the only time that Mr. John S. Phipps expressed an interest in the rates charged on the Seminole, was it?

A. No, sir, I think there was another occasion.

Q. And that other occasion you referred to this memorandum that he wrote on Pilkington's bill of August 31, '32?

A. Yes, sir.

Q. On that occasion he asked to see if you could get a reduction on the Iolanthe and the Seminole, from September on, did he not?

A. Yes, sir.

Q. You say those two occasions are the only occasions when the matter of rates for storage on the Seminole were discussed between you and John S. Phipps?

A. The only other time I remember is one time when Mr. Pilkington reduced the rates on his own; in other words, we hadn't asked for a reduction, and I received a letter from him saying that he was reducing them? I told Mr. H. C. Phipps and Mr. J. S. Phipps about it. That is the only other time I remember talking about rates. The time of the conversation, there hadn't been any conversation between—I mean the conversation between Pilkington and Phipps and myself before that there hadn't been any conversation between Mr. Phipps about it.

Q. You have told us about the only occasions on which the matter of storage was discussed with Mr. J. S. Phipps at all?

A. The ones I remember, yes, sir.

Mr. Matteson:

I think that is all.

Q. Mr. Riley, do I understand you that no one, so far as you know, either verbally or in writing vouched for your authority to Captain Pilkington other than Mr. Bryant, Captain Bryant, who was Captain of the Seminole? Is that true?

A. That is the only one I know, yes, sir.

Q. And as I understand, you hired Captain Bryant?

A. Yes, sir.

Q. And then he vouched for you?

A. Yes, sir.

Q. And on the basis of that, over a period of years, you undertook to give written directions to Captain Pilkington with respect to this boat, the Seminole, and other boats?

A. Yes, sir. Captain Pilkington—I mean Captain Bryant, knew Captain Pilkington, had known him for quite a while I think, at the time he introduced him to me.

Q. And how long after that occasion was it before you visited this yard with Mr. J. S. Phipps?

A. Well, the only other time except 1934, that I can remember, is in 1932; I am not positive whether it was '32 or '33, but it was in the spring, and it was—well, probably in April, or the first of May. That was in 1932 I think.

Q. You visited the yard with Mr. Phipps?

A. Yes, sir.

Q. And when was it that Captain Bryant introduced you to Captain Pilkington?

A. I think it was 1931, the best of my recollection.

Q. Approximately a year earlier?

A. Yes, sir.

Q. Mr. Riley, could it be possible in your judgment, that the sequence of events is, after these many years, con-

fused in your mind, and that you were there with Mr. Phipps on the first occasion of your introduction?

A. No, sir, there is no confusion in my mind at all; because the reason is—the reason I know it was Captain Bryant, because I was either riding in his car or he was riding in mine, I don't remember which,—I think, in mine, and I got lost on the way he told me to turn up a certain street, and I misunderstood him and went the other street, and finally got on the right road. That is the reason I recollect it so perfectly. I had never been to Pilkington's yard before that, at that time.

Q. And is it possible Mr. Riley, in your best judgment, after these long years, that the occasion when you were there with Mr. Phipps was not a year later, but the same year that you went there with Mr.—with Captain Bryant?

A. Well, that is possible, from this standpoint; that it might have been '31, '32 or '33; that I was there. I think I could find from the records of the summary that the trip was taken, and from those I could tell you exactly what year it was that I was there with Mr. Phipps.

Q. It is possible then, as I understand it, that a relatively short time, perhaps a few weeks, might have intervened between the time you were there with Captain Bryant, and the time you were there with Mr. Phipps? I say, that is possible?

A. That is possible, yes.

Q. All right; now then, when you were there with Mr. Phipps, do you have at this time any definite recollection as to just what you did, and where you were, and what was said, on that occasion? I mean, after all these years, can you recollect that picture definitely at this time?

A. Well, of course I know the purpose of the trip:

Q. Wait a minute, would you mind answering the question yes or no, and then make any explanation you want to? I say, can you now recollect it with clearness and definiteness, or are there some indefinite features of that transaction?

A. I would rather not answer it yes or no, because I couldn't tell you just how long I stayed there, no. I don't know whether it was fifteen minutes, a half an hour or an hour.

Q. All right then; there is, as is natural, a certain amount of indefiniteness with reference to the circumstances attending on that visit; is that true?

A. You mean indefiniteness as to what we did?

Q. As to generally what took place there at the time. You don't remember all the details, do you?

A. I think I do,—everything that was of importance. We went there and found the boat, checked the boat over; and I couldn't say what was said when we walked to the boat, no; I can't be positive about that.

Q. All right; now then, do you know whether or not you remained with Mr. Phipps during the entire visit?

A. No, sir, I couldn't swear to that.

Q. In other words it is entirely possible that you might have remained on the boat, looking at some things, or looking at some other boat, and Mr. Phipps walked off and engaged in conversation with others? That is entirely possible, isn't it?

A. That is a possibility, yes.

Q. Then I understood you to say that you never heard Mr. Phipps say to Captain Pilkington, in substance, "This is my secretary", or "Mr. Riley is my secretary", or "Mr. Riley is my representative", or anything of that kind?

A. Mr. Phipps has never called me his secretary; I never have been his secretary.

Mr. Botts:

Would you read the question?—I don't believe the answer is responsive.

(The last question preceding was read.)

Q. I asked you the question, did you hear him make such a statement?

A. No.

Q. With reference to Mr. Phipps' properties, and the management and upkeep of his properties in Palm Beach, you were in a sense his representative?

A. In the same way I told Mr. Matteson, exactly.

Q. In the management of his boats? Don't think I am trying to trick you; I will say, the boats Iolanthe and Clip; you were in a sense his representative in connection with keeping up those boats and caring for them, weren't you?

A. Yes; I took recommendations and gave them to him, and he approved them or disapproved them as he saw fit.

Q. If Mr. Phipps had said to Captain Abel "Mr. Riley is my representative in connection with my boats," that would have been true, wouldn't it?

A. You mean on his boats Iolanthe and Clip?

Q. I say, "With reference to my boats," now. Do you consider the Seminole his boat?

A. No, sir.

Q. Well, then, answer the question.

A. Yes, that would have been.

Q. That would have been true?

And you did, as a matter of fact have the detail or the control with reference to the storage and care of Mr. Phipps' boats, the Iolanthe and the Clip, didn't you?

A. Yes, sir; I knew what the storage bills were, had them approved.

Q. You approved them and they were paid under your approval?

A. No, they were approved by Mr. Phipps also in most cases.

Q. In most cases?

A. Yes, sir.

Q. All right. Now then, except possibly for the personal approval which you sometimes secured, with reference to the payment of bills on the Iolanthe and the Clip,

your handling of the details with reference to the Iolanthe and the Clip and the Seminole were about the same, weren't they?

A. No, sir, they weren't; because I couldn't expend the money on the Iolanthe or the Clip without Mr. Phipps' approval.

Q. But with reference to the storage charges, the storage charges on the Iolanthe and the Clip were paid by checks of the Palm Beach Company, weren't they?

A. Yes, sir.

Q. And the storage charges on the Seminole were always paid, weren't they?

A. Yes, sir.

Q. And with reference to the Iolanthe and the Clip, you would send word to Mr.—to Captain Pilkington, what you wanted done with reference to them, would you?

A. I think for some work, yes.

Q. And you would do the same thing with reference to the Seminole, wouldn't you?

A. Yes, sir.

Q. And in your mind, the difference was with reference to the Clip and the Iolanthe, you were acting for J. S. Phipps, but with reference to the Seminole, in your mind, you were acting for the Seminole Boat Company, is that true?

A. Yes, sir.

Q. But the checks all came from the same source?

A. They were all made by the Palm Beach Company, except a few, that Mr. Phipps—

Q. And the main—

Mr. Underwood:

Let him finish his answer.

A. Except a few that Mr. Phipps made on his own checks, paying for the storage of the Iolanthe or the Clip.

Q. And your contact, however, with Captain Pilkington, was so near identical with reference to the three boats, that it would be difficult for even you to point out any distinction, as far as you were concerned, wouldn't it?

Mr. Underwood:

I object to that, if your Honor please as argumentative.

(The question was read.)

The Court:

Overrule the objection.

Q. Answer the question.

A. Of course Captain Pilkington didn't know what arrangements I had. All he knew, I was looking after the Seminole, and also on occasions I looked at the Iolanthe and the Clip,—if that is what you mean.

Q. Yes. Then in truth there was little difference so far as between you and Captain Pilkington, if any; isn't that true?

A. Yes, I don't know that I ever went into explanation with him as to my duties.

Q. Now then, on this occasion when you and Mr. Phipps were there, it is entirely possible that in your absence Mr. Phipps did make to Captain Pilkington a statement to the effect that you were his agent, representative, secretary, or something of that kind.

Mr. Underwood:

If your Honor please, I object to that as speculative. Anything is possible in Mr. Riley's absence.

The Court:

I think it is proper cross examination.

A. I suppose it is possible, yes.

Q. And you can't say that it didn't in fact take place, can you?

A. It didn't take place in my presence.

Q. All right. I have asked you that already; that is all right, I understand that. Now then with reference to the handling of Mr. Phipps' properties, which we will limit to his estate and lands and his boats, the Iolanthe and the Clip,—you state in substance that you performed the ordinary functions of management, and that Mr. Phipps gave instructions to quote your exact words, not in the ordinary course of business. Now will you explain to us just what those things were which you characterized as not in the ordinary course of business, and in respect to which Mr. Phipps gave especial instructions. Can you illustrate?

A. Well, I certainly wouldn't built an addition to Mr. Phipps' house without his telling me to do so. On the other hand, I would pay the employes on the estate, that he knew were there, without his special permission; he knew they were there and knew how much they were to get.

Q. And with reference to his boat, you would pay the employes of his boats without special instructions there through the company?

A. Yes, sir.

Q. Of course I understand that, in the ordinary method that had been established for paying his personal obligations. And the method of paying Mr. Phipps' personal obligations with reference to his estate, and with reference to his boats, was exactly the same as the method for paying the expenses and disbursements with reference to the boat Seminole, isn't that true?

A. No, sir, because he approved the bills on his estates, with the exception of payrolls. Payrolls of course go on in the summer and there is no way of approving them. The bills were sent to him in New York, for work on his

estate, and given to him here in Palm Beach when he was here in the winter, he approved them.

Q. I limited my question to the ordinary expenses for upkeep of his estate, and the payment of ordinary expenses for labor and so forth on his boats. Now, isn't it true that the method of payment of these ordinary expenses on his estate and on his boat, and on the boat Seminole, were identical? Isn't that true?

A. No, sir; I just gave the reason why it wasn't true.

Q. I wonder if you can find voucher 8320.

A. Which bunch was it in? June 29.

Q. June 29. Will you take that please, Mr. Rliey now that as I understand it had three items. One charged to the Seminole Boat Company. How much was that?

A. \$5.00.

Q. And one charged to Mrs. F. E. Guest; how much was that?

A. \$10.00.

Q. And some charged to J. S. Phipps Boats; how much was that?

A. \$45.00.

Q. Now then, those were ordinary expenses with reference to those three boats, weren't they?

A. You mean did I have to get them approved?

Q. I say, those were ordinary expenses with reference to those three boats, weren't they?

Mr. Underwood:

If your Honor please, I submit that the witness feels that he doesn't understand the question.

Mr. Botts:

He doesn't need counsel's help in answering it.

Mr. Underwood:

May I be permitted to make my comments without interruption?

Mr. Botts:

No, sir, you cannot when you are trying to instruct the witness how to answer.

Mr. Underwood:

I resent that accusation. This witness does not need any instruction from you or from me. The witness started his answer with the word "If", so I assume that he didn't feel that he understood the question.

Mr. Botts:

He can say so, if he wants. I am not trying to deceive this witness.

Mr. Underwood:

I think you were trying to mislead him.

The Court:

Do you understand what ordinary expenses are?

A. Well, I wanted to ask him one question.

Q. All right, go ahead.

A. I want to ask if you mean by that that I have to get approval to pay that \$10.00 and that \$45.00.

Q. I haven't asked you that question. No, sir, that wasn't what I asked—Mr. Reporter, will you read the question.

(The last question was read; "I say, those were ordinary expenses with reference to those three boats, weren't they"?)

A. Yes, those are ordinary expenses.

Q. All right; and who approved the payment of the charge to the Seminole Boat Company?

A. I did.

Q. Who approved the payment for Mrs. Guest's boats?

A. I did.

Q. Who approved the payment of J. S. Phipps' Boats?

A. I did.

Q. Did Mr. Phipps approve them?

A. Well, he didn't on this particular occasion. He approved—

Q. All right, I know that:

Mr. Underwood:

May he finish, please?

A. He approved the work that Abel was doing on that boat.

Q. His approval isn't on the bills, is it?

A. No, sir.

Q. Then is there the slightest difference in the method of handling and paying those three items chargeable to those three people? ✓

A. No, sir.

Q. All right. And isn't that the exact situation that obtained with reference to all other ordinary, usual expenses, with reference to Mr. Phipps' estate,—Mr. Phipps' boat—the boat Semnole? Do you understand that question?

A. I don't exactly understand what you mean by ordinary, no. If you mean payrolls, labor, that is true.

Q. Well, I will quote your words; "Expenses in the ordinary course of business"; you understand that, you used the phrase.

A. Well, by that I meant, payrolls; that is what I had particularly in mind.

Q. Then you didn't mean, repairs?

A. You mean, purchase of material and so forth?

Q. Made in the ordinary course of business; you didn't mean repairs?

A. Not special repairs, no.

Q. Did you mean any kind of repairs?

A. Well, if this man put in a new piece of pipe in the boat, why I suppose that is ordinary business, yes; because he was working, and bought a piece of pipe and put it in.

Q. I want you to understand, Mr. Witness, that I am not trying to trick you about any question; there are some things that I want to give you a chance to make clear, because I am going to comment on them later, and I don't want to be charged with being unfair about that. So if you don't understand the question, I ask you not to answer it until you do. Now you employed Mr. Schlappi, the engineer, didn't you?

A. Yes, sir.

Q. And you assigned him a part of the time to the boat Seminole, didn't you?

A. Yes, sir.

Q. And you assigned him a part of the time to the Iolanthe, didn't you?

A. Yes, sir, when we needed him,—when he was needed.

Q. And you o.k'd the payment of his salary or wages?

A. Yes, sir.

Q. And you o.k'd it to the identical manner, whether he was working on the Iolanthe, or the Seminole, didn't you?

A. I did so far as the vouchers are concerned, yes, sir.

Q. Did you consult anyone in connection with the selection of Mr. Schlappi to act as engineer?

A. The Captain of the boat, yes.

Q. You consulted with the Captain?

A. Yes.

Q. And that is all?

A. Yes.

Q. Now then as I understand it, you had the dealings with Mr. Thomas which resulted in his receiving these monthly gratuities?

A. Yes.

Q. Now did Mr. Thomas approach you and ask you to do something of the kind?

A. No. We discussed it together; I wouldn't say he approached me, and I didn't approach him on it.

Q. All right, where were you when the discussion of this—I don't want to use the word, settlement,—this method of adjusting affairs with Mr. Thomas, occurred?

Mr. Underwood:

If your Honor please, I object to the question. There is no suggestion in the evidence thus far, that this was any method of adjusting affairs with Mr. Thomas.

(Discussion by counsel.)

The Court:

As I understand the question, it is, doing business with Mr. Thomas.

Mr. Underwood:

We don't object to that at all.

A. I was—he asked where?

Q. Yes.

A. In the hospital in West Palm Beach.

Q. That was during the period that the Palm Beach Company was disbursing funds in payment of Mr. Thomas' hospital and doctor's expenses?

A. That is right, yes, sir.

Q. And tell us just what you said to Thomas, just what he said to you, if you can.

A. Well, it was—got to the point where he was going to be released from the hospital, and I think I asked him

what his house arrangements were, where he lived; and he told me that he had been worried about that, because of course there was this lameness in his leg; that he wasn't going to be able to go up and down stairs and nobody could carry him up and down stairs. That he had been living in a garage apartment on the second floor, and that he felt he ought to have a house, one-story house. So they told me at the hospital that he should have an attendant for a while, to help him get around. At the time, his wife was pregnant, needed help also. So I don't know just how,—what basis the \$125 a month was on, I don't remember the details; but it was the difference between the house rent; he also advised me that his pay had been cut, because he wasn't able to work, and there was that. And then this attendant and the help for the wife; also, telephone to be put in the house so that he could get in touch with the doctor.

Q. Now Mr. Thomas had never been an employe of the Palm Beach Company, as I understand it?

A. No.

Q. Nor, of the Seminole Boat Company?

A. No.

Q. Nor of any of the other Phipps organization?

A. No, sir.

Q. Nor of Mr. Phipps or any of his relatives personally, so far as you know?

A. No, sir.

Q. And then you weren't purporting to pay him wages as an employe?

A. No.

Q. Did you tell him who suggested that they make these continued and substantial payments?

A. No one did suggest it, except me.

Q. No one told you that you were authorized to pay out all this money to Thomas?

A. I talked the matter over with him, and then consulted with Mr. Alley. Mr. Alley gave me approval to go ahead and do it.

Q. Now then, was the payment,—the making of payments aggregating as they have something over \$7,200, was that in or out of the ordinary course of business?

A. I should say that was out of the ordinary course of business.

Q. And as I understood it, you said that when payments on the boat Seminole or for Mr. Phipps', out of the ordinary course of business, came up, you consulted either with the stockholders or with Mr. Phipps; is that right?

A. No, I said I usually consulted with Mr. Alley or with the stockholders.

(And thereupon the hearing was recessed until 9:30 o'clock a. m., the following day.)

Forenoon Session.

May 12, 1939, 9:33 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day, the witness JAMES F. RILEY, JR. being upon the stand, on continued cross examination.

Q. All right, sir. Now getting down to this fishing tackle that you wanted to get off the Seminole; as I understand it, that was some, what you call grains, or three-pronged fishing spears?

A. Yes, sir.

Q. Some glass bottom buckets?

A. That is right.

Q. Some, I believe you stated, gaff hooks?

A. Right.

Q. Did you say boat hooks. I have forgotten.

A. No, gaff hooks; and I think there was some bait nets; I think they call them, made out of wire.

Q. That would be wire with cotton string mesh, is that what you mean? Isn't it fish net or something of that kind?

A. No, I mean the bait nets that they put live net in and drop down in the water. I can't describe them.

Q. I call them bait cars. I think that is the technical name for it.

A. That may be.

Q. Now as I understand it you say that previous to this year, those things had been stored in Miami?

A. That was my understanding. We never had stored them at Palm Beach.

Q. You never had stored them at Palm Beach. You don't know as a matter of fact if they had ever been stored anywhere—I mean, of your own knowledge?

A. Nothing except what Mr. Hawkins told me.

Q. You don't know of your own knowledge then?

A. No.

Q. And so far as you know they might have been left on the vessel during the summer?

A. Possibly so, but I don't believe so. I think I would have seen them on the vessel on my inspection trips.

Q. Not at the time when you discussed with Thomas, these payments that were made to him, and began the practice of making these monthly payments to him, you were aware that Mr. Thomas had never previous to that time been an employe of the Seminole Boat Company or of the Palm Beach Company, or any of the Phipps personally?

A. Yes, sir.

Q. And you were also aware that, save and except for a possible junk value of the vessel Seminole, that the Seminole Boat Company was entirely without any assets which could have been made the subject of any claim?

A. I was not aware of that. I don't know anything about the books of the Seminole Boat Company, what the set-up is.

Q. Oh, you didn't know anything about the financial standing of the Seminole Boat Company?

A. I don't know anything about the books of the Seminole Boat Company, if that is what you mean.

Q. Wait a minute; did you know anything about the financial condition of the Seminole Boat Company?

A. Well, I knew that the Seminole Boat Company owned the Seminole and another small boat.

Q. And another small boat?

A. Yes, sir.

Q. You knew it had no bank account?

A. Yes.

Q. And you knew it had no income?

A. Well, they tried to make an income.

Q. Well, it didn't in fact, have a nickel of income except contributions from the stockholders, since about 1931, isn't that a fact?

A. No, I never did handle the charters.

Q. Since it has been in your charge, the boat Seminole had never earned a dime?

A. It never was chartered out of Palm Beach and it was at Palm Beach that it was in my charge.

Q. From the time you had charge of the boat Seminole, beginning at about 1932, up until the time of the fire, it had never earned a dime, had it?

A. Not that I know of.

Q. And you knew that all of its obligations had been paid in the first instance by the Palm Beach Company, on vouchers approved by you, and the Palm Beach Company reimbursed from the stockholders of the Seminole Boat Company? You knew that, didn't you?

A. Yes, sir, I knew that the Palm Beach Company advanced moneys to the Seminole Boat Company.

Q. And you knew that they got those moneys back from the stockholders of the Seminole Boat Company, didn't you?

A. Eventually, yes.

Q. Yes, all right. Now then Mr. Riley, didn't you as a matter of fact know—now let's get right down to brass tacks. Didn't you know that the Seminole Boat Company after that fire had no assets whatever except possibly value of the boat Seminole; and I will ask, the value of this small Prigg fishing boat? Don't you know that was its sole assets?

A. Those were all the assets that I knew of, yes, sir.

Q. And you had been the active manager of it for about four years, had you?

A. Yes, sir.

Q. And you didn't know anything else?

A. Well, I was active manager of the Seminole, yes, and those are all the assets I ever heard of in the Seminole Boat Company.

Q. Well, you had a pretty well convinced idea that it had no assets, except those that I have mentioned, didn't you?

A. Yes, sir, I don't think it had any others.

Q. Now then, knowing that the Seminole Boat Company had no assets except those that I have mentioned, and that the fire originated on the Seminole, and so on, you knew that John Thomas couldn't successfully collect any substantial amount from the Seminole Boat Company, didn't you, even if he could successfully get a judgment against them? You knew that, didn't you?

A. I suppose I did, I never thought of it.

Q. Well, I am trying to get just exactly what you were thinking about then, when you initiated these payments ultimately running up to seven thousand, two hundred odd dollars to John Thomas. Just what liability were you thinking about?

A. Well, I felt sorry for John Thomas. There was a man that had either—his pay had been cut, and he had no way of living, that I could see, the way he was going to have to live.

Q. Of course everyone would feel sorry for them; there were lots of other unfortunates in Palm Beach, weren't there?

A. Yes, sir, that is true.

Q. Did you happen to make any such gratuitous payments to any other unfortunates in Palm Beach along about that time?

A. No, sir, not that I remember.

Q. Well, then, can you give any explanation now, other than the natural human sympathy which we all have for an unfortunate,—why you voluntarily made these various substantial payments, which are still continuing to this young man?

A. Well, nothing more than what I have said; I felt sorry for him; I went to Mr. Alley and asked him if we couldn't do something for him. He asked me how much, and I told him.

Q. You are the one that suggested it, then?

A. Yes, sir.

Q. Oh, yes. Now then you were at that time interested in collecting and preserving evidence with reference to this transaction, weren't you?

A. Yes, sir.

Q. Especially evidence that would fix liability on the Seminole Boat Company?

A. No, not especially; just trying to get the facts.

Q. Just trying to get the facts; all right. Now then in view of your interest in this evidentiary situation, I will ask you this: If at the time when you suggested these payments to John Thomas, it remotely occurred to you that John Thomas was the only living witness to that transaction?

A. I knew that he was the only living witness, yes, sir, except Pilkington and the rest of them that were there at the yard.

Q. Did you think of that circumstance in connection with the advisability of making these payments?

A. I didn't at the time, no, sir.

Q. You didn't. Now my recollection is that at the time when you made this guarantee to the Broward General Hospital, you did so in the name of the Palm Beach Company, or by identifying yourself as being connected,—or personally identifying yourself as being connected with the Palm Beach Company, is that right?

A. Yes, sir.

Q. All of these expenses of John Thomas appear now to be recorded in the ledger of the Seminole Boat Company; you are aware of that, aren't you?

A. I believe they are, yes.

Q. Did you direct that these items be charged against the Seminole Boat Company?

A. I believe so, yes, sir.

Q. All right now, just when was it, will you mind telling us, when you decided that you would charge these expenses against a company different from the one in whose name you made the guarantee?

A. Well, that was the usual course of business, with anything that pertained to the Seminole Boat Company, we charged to the Seminole Boat Company on the Palm Beach Company books.

Q. But you didn't make the guarantee in the name of the Seminole Boat Company, did you?

A. No, sir.

Q. I am just trying to find out whether or not the thought of carrying this Palm Beach Company guarantee in effect by recording the charges in the books of the Seminole Boat Company, with the thought that occurred to you along the time maybe when you were getting photostats of these gasoline slips?

A. No, sir, I don't believe so, because I paid, as I remember it I paid the hospital \$200 on the next day after the fire; either the next day or the third day.

Q. Now I believe you said that you were present when you saw Mr. Carl Holm pick up some valves, from the rubbish and debris in the engineroom of the Seminole and mark them with a hacksaw or a file?

A. Yes, sir, I was present.

Q. I am not sure that I can quote you exactly, but my recollection is that you said at that time that you were not particularly interested in those valves?

A. I was not.

Q. Up to that time you had never been interested in the valves from the engineroom of the Seminole, is that true?

A. That is true, yes, sir; never thought of them.

Q. During all these years when you were inspecting the Seminole from time to time, during all those years, you hadn't been interested in those valves, had you?

A. Well, I left that entirely up to the engineer and Captain. I don't know anything about valves.

Q. During all those years you had never inspected those valves, had you?

A. No, sir.

Q. And during all those years you had never inquired to find out whether anybody else had done so, had you?

A. No, sir.

Q. All right. Had you ever looked at the tanks of the Seminole?

A. No, sir.

Q. You didn't know a thing in the world about how they were constructed, or anything else, did you?

A. No, sir.

Mr. Botts:

I think that is all.

By Mr. Matteson:

Q. May I ask just a few questions more?

The Court:

Yes, sir.

Q. Mr. Riley, Captain Abel did act, at least part of the time, as Master of the Clip, did he not?

A. Yes, sir.

Q. And he also acted as Master of the Iolanthe?

A. Yes, sir.

Q. When it was in operation. He had never acted as Master of the Seminole?

A. No, sir.

Q. I was looking over these gasoline charges here on these different slips; there seem to be a number of them for a Ford coupe. Whose car was that?

A. A Ford coupe?

Q. A Ford coupe.

A. It would be impossible for me to say offhand, I don't know.

Q. Well, here—look at these, who did you charge those to when they came in?

A. It looks to me as though these slips are for the car that was owned by Abel. I thought he had a Chevrolet coupe. The reason I say that is because in most cases the amount of gasoline is five gallons; and he was allowed five gallons of gasoline per week. There is the 19th, 24th—

Q. Well, here are quite a number that have no heading at the top, except J. S. Phipps, and they are all five gallons too.

A. I believe these—those are all under—for gasoline on the car that Abel had.

Q. You are referring now to these slips that I have shown you, that have no heading except, John S. Phipps?

A. Yes, sir.

Q. Now I have shown you a number with the heading, Ford Coupe; and here are a number of more; some seem to be headed, Chrysler Coupe and Chrysler sedan.

A. The Chrysler sedan belongs to Mr. J. S. Phipps.

Mr. Underwood:

May I see the ones you say are headed Chrysler coupe? —That isn't Chrysler. I don't want to say this in the presence of the witness; come over here and I will tell you what it is:

Mr. Matteson:

I have no objection to your suggesting it to the witness.

Mr. Matteson:

I don't want to be in the position of suggesting anything.

Q. This one I have referred to as Chrysler coupe, may be a Chevrolet coupe.

A. Chiv, that looks like.

Q. So that is a Chevrolet coupe. Then we have a Ford sedan, Chevrolet coupe, and a Chrysler sedan.

A. Have a Ford coupe instead of a Ford sedan.

Q. Did I say sedan? Ford coupe, *Chrysler* coupe, Chrysler sedan, is that it?

A. Yes, sir, that is correct.

Q. Now can you tell me whose cars these were, and to whom the charges were made on those different cars?

A. On these tickets that have no car marked on them at all, I am sure that is Abel. The Ford coupe I am not sure of, I don't know who that belonged to. It might have belonged to Abel and later he traded it in for this Chevrolet coupe; I know at the time of the fire he had a Chevrolet coupe. The Chrysler sedan belonged to Mr. J. S. Phipps personally:

Q. And did Abel at times drive the Chrysler sedan for Mr. Phipps?

A. Yes, sir, he has.

Q. And did he use his own car on company business?

A. You mean other than for Mr. J. S. Phipps?

Q. Well, I mean the general business that you would assign to him.

A. No, not unless he bought gasoline for it.

Q. What was the reason for the allowance to him of five gallons a week?

A. Well, he did a lot of running around with his car; he came to and from work in his car; and Mr. Phipps said "Just to let him have five gallons of gasoline a week."

Q. He did do more or less running around on the company business?

A. No, sir.

Q. I thought that is what you said was the reason for the allowance.

A. No, not company business; on Mr. J. S. Phipps' business.

Q. On Mr. J. S. Phipps' business. So when he wasn't occupied actively as Captain of one of the boats, he would sometimes act as a chauffeur, is that right?

A. No, sir, not as a chauffeur. The times that he would use that Chrysler sedan would probably be, if he went on a hunting trip or a fishing trip, they would go out and do some fresh water fishing, of that sort, and he did go on quite a few duck hunting trips, and he usually used the Chrysler to carry along paraphernalia with, that was used.

Q. Well, did he or did he not use these cars for general errands, or occasional errands, for you or for Mr. Phipps?

A. You mean the Chrysler sedan or any of them?

Q. Any.

A. He used his own car for errands for Mr. Phipps.

Q. You were saying yesterday that this entry number 4206, representing Abel's salary for a week, charged to

Townsend Martin, was because he was doing something for Townsend Martin that week. Can you tell me what he was doing for Townsend Martin that week?

A. No, sir, that would be impossible.

Q. But is it possible, or is it a fact, that Mr. Townsend Martin was using the Clip that week?

A. I don't know; it is possible.

Q. You haven't any recollection at all of what he was doing for Townsend Martin?

A. No, sir, I don't.

Q. Did Townsend Martin at that time have the use of the Clip?

A. Yes, Mr. Phipps loaned it to him.

Q. And on such occasions, would the wages of Abel be charged to Mr. Townsend Martin?

A. No, not when he was on the Clip. If it was, Mr. Phipps loaned it to him he never charged him for the operation of it.

Q. And you didn't charge the wages involved, to Mr. Townsend Martin?

A. I don't believe so. I don't think Mr. Phipps ever made him pay the wages when he was using the Clip; but I am not positive of that.

Q. Then I take it that this second voucher, 4247, \$32.60, for salary and reimbursement of expenses to Abel, charged to Mr. Townsend Martin—do you have any recollection of what that was for,—what he was doing for Mr. Townsend Martin at that time?

A. No, sir, I don't.

Q. And then here the next voucher, 4364, four weeks' salary, charged to Mr. Townsend Martin, do you recall what that was?

A. No, sir, I don't.

Q. No recollection?

A. I can't say exactly what he was doing. I think I might find out from the files.

Q. That was in 1933, wasn't it?

A. Yes, sir.

Stipulation:

It is stipulated that in the first line on page 1562, the word "with" should read "without".

The Court:

That is stipulated with all counsel, is it?

Mr. Botts:

Yes, I remember it clearly.

Mr. Underwood:

Yes, that is right.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Riley, do you remember whether you had any conversation with anybody before you went down—between the time you got the carbon copy of the gasoline slips, and the time you went down for the original?

A. I might have had conversation with Mr. Alley, I am not positive of that.

Q. Do you remember about that definitely, either way?

A. No, sir.

Q. Mr. Riley I note that of these forty-six gasoline slips the ones dated May 15, 1934,—there are two of that date—one dated May 16, 1934 and one dated May 11, 1934, are all charged to Chrysler sedan; and three I think, bear in addition to the designation of car, the initials, T. B. M. That is May 16 to 17, inclusive, 1934. Is it not a fact that Abel's pay for the week of May 17, 1934 was charged in part, and for the week of May 24, 1934 was charged ap-

parently in toto, to either Mr. Townsend or Mr. Bradley Martin?

A. Yes, sir, that is correct.

Q. When this analysis of the payroll of Abel's was made up, is it a fact that Townsend Martin's and Bradley Martin's charges were included in the same column?

A. Yes, sir.

Q. So without looking at the original payrolls, you can tell whether it is Townsend or Bradley?

A. No, sir.

Q. The original payrolls would show that?

A. Yes, sir.

Q. The original payrolls would show that?

A. Yes, sir.

Q. Can you tell me why it was that the gasoline purchased for the Chrysler was charged to one of the Martins, if the Chrysler was owned by John S. Phipps?

A. It is possible that the car might have been loaned to Townsend Martin on that particular occasion, and that naturally he wouldn't expect to have loaned him the car with gasoline, he might have insisted on paying for it.

Q. You were asked some questions about your dealings with John Thomas, while under fire. Did you ever make any agreement with him, directly or indirectly, expressed or implied, as to the character of his testimony?

A. No, sir.

Q. Or as to what he would say as to what transpired on the Seminole on the day of the fire?

A. No, sir.

Q. When Mr. Botts was speculating with you about the possibilities of signing the gasoline tickets, I observed that he held the pad in his left hand, with his thumb, his left thumb firmly fixed across the pad at the top, covering the line reserved for the name and address of the charge, and he asked you whether or not the thing might slip. I am going to ask you to tell me and show the Court

under what other circumstances a man might possibly hold that pad to sign it; not all possibilities but just a few that occur to you.

A. Well, in some cases, in the first place this top is made out in the office before they ever bring the ticket out to you; I have seen them mark it a lot of times; they see who comes up, and makes the ticket out and bring it out for you to sign. When they hand it to me in the car, I usually put it on my steering wheel like that.

Q. You have indicated your thumb covering up more than half an inch of the left margin of the pad.

A. Yes, sir.

Q. And no other finger on top of the paper?

A. No, sir.

Q. All right, go on.

A. Or, I put it on the sill of the door, on the side, and sign it.

Q. Indicating the same position of the thumb?

A. Yes, sir.

Q. Have you ever seen anybody sign a gasoline ticket where the pad was held by the station attendant, and the signature written by the purchaser, without holding the pad himself at all?

A. No, sir, I don't believe I have.

Q. Have you sat in a car and reached outside the car to sign the ticket, when the station attendant was holding the pad?

A. No, sir, I don't believe I have.

Q. Is it quite possible that a man might also sign the pad by holding it in his hand as I have it now, with the three fingers against one side, and the thumb against the other side, but neither fingers nor thumb over the top of the paper?

A. Yes, sir, I think he could sign that way.

Q. Is it quite possible that the upper ticket might slip over the lower ticket while the pad was being signed in some such way?

A. Yes, sir.

Q. You have recalled, I think, sending a man down to the Seminole shortly after returning from the cruise in the spring of 1935, to bring back some beds or springs or something of that sort?

A. Yes, sir.

Q. Do you know whose property those things were?

A. They belonged on the Iolanthe, which was owned by J. S. Phipps.

Q. You mean that they had been borrowed for this cruise from the Iolanthe?

A. Yes, sir.

Q. Now at that time what was Randall's position in the office?

A. I suppose you would call him office boy. He did errands.

Q. How old a person is he?

A. Sixty-three I believe.

The Court:

He was in the office of the Palm Beach Company?

A. Yes.

Q. He was in substance the Palm Beach Company's office boy, was he?

A. I think I am right about that. He used to work for Mr. J. S. Phipps, and he was at our office, and I am not sure the year, it was either '34 or '35, but I believe at this time he was working there in the office, as office boy.

Q. Did you make any report to anybody of your inspections of the Seminole?

A. Well, I discussed the inspections with Mr. Alley.

Q. Did you make any reports concerning the engine plant and the gasoline lines or tanks of the Seminole?

A. No, sir.

Q. How did you get your information as to the condition of the engines and the gasoline lines and tanks and

the electrical equipment and so on, in the engineroom of the Seminole?

A. I depended entirely on the Captain and engineer to tell me whether there was anything necessary,—repairs or replacements.

Q. Did you have any report from them from time to time, as to that?

A. Yes, sir.

Q. Have you had any mechanical experience yourself?

A. No, sir.

Q. You told us yesterday that you worked for a contractor, as I recall it, before you went to work for the Palm Beach Company. What did you do before that?

A. I worked in a brick and tile manufacturing plant.

Q. And before that?

A. I was at school before that.

Q. Where did you go to school, and how long were you in school, and what did you study?

A. I went to prep school for two years.

Q. Where?

A. At Marion, Alabama; and then I went to Washington and Lee University in Virginia one year, and went to Alabama Polytechnic Institute in Auburn, Alabama for one year.

Q. You were asked yesterday, with voucher number 97 of Exhibit 78 before you, about the entry dated August 9, Palm Beach Service Station, gas \$2.19, indicated the date of payment. Do you remember that?

A. Yes, sir.

Q. What payment do you mean that that indicated? Payment from whom, to whom?

A. Well, this August 9 does not indicate the day that we paid the Palm Beach Service Station.

Q. What does it indicate?

A. It indicates—

Mr. Matteson:

Does the witness know? * * *

A. I really don't know, no.

Q. Do you remember what you were about to do, if anything, with the originals of these two gasoline tickets signed by Abel on the day of the fire, when you had the photostats made?

A. I gave the original, and I think a copy too, to Mr. Alley, and kept the photostats in our files.

Q. You said something yesterday about being in charge of the Iolanthe and the Clip. Who was it that gave your instructions to you as to that?

A. Mr. Phipps.

Q. Did you get any instructions as to that from Mr. Alley?

A. No, sir.

Q. Have you that file of Pilkington letters, to and from? — I show you Libelants' Exhibit 49, did you write that letter?

A. Yes, sir.

Q. That is in August, 1931?

A. Yes, sir.

Q. I show you another letter dated April 16, 1935; did you write that letter?

A. Yes, sir.

Q. That Libelant's Exhibit 53. Is that the one that you gave to Randall, of whom we spoke a moment ago?

A. Yes, sir.

Q. When did he go down there with reference to the date of that letter?

A. He went down the same day.

Q. Mr. Matteson has asked me too, to have you identify all your letters in here; we will go through and do it. There is Exhibit 49, dated August 26, 1931; you wrote that?

A. Yes, sir.

Q. Exhibit 55 dated January 2, 1932?

A. Yes, sir.

Q. Exhibit 41 dated May 18, 1933?

A. I dictated that but didn't sign it.

Q. Who signed it?

A. I don't know; the stenographer's initials are there.

Q. There are some initials below the pen and ink, J. F. Riley?

A. Yes, sir; the initials are E. H., which indicate Edna Holmes.

Q. Exhibit 50 dated September 13, 1932, did you write that?

A. Yes, sir.

Q. —and sign it?

A. Yes, sir.

Q. Exhibit 56 dated March 21, 1933, did you write and sign that?

Q. Exhibit 57 dated May 3, 1933, did you write and sign that?

A. Yes, sir.

Q. Exhibit 47, dated May, either 2 or 3, 1934, did you write and sign that?

A. Yes, sir.

Q. That is all in your handwriting?

A. Yes, sir.

Q. Exhibit 48 dated September 5, 1934, is that all in your handwriting?

A. Yes, sir.

Q. Exhibit 53 dated April 16, 1935, did you write and sign that?

A. Yes, sir.

Q. Exhibit 60, without a date, did you write and sign that?

A. Yes, sir.

Q. That is the one you gave to Captain Abel on the day of the fire?

A. Yes, sir, all in my handwriting.

Q. And Exhibit 62 dated September 30, 1935, did you write and sign that?

A. Yes, sir.

Mr. Botts:

I take it the one he didn't sign, he accepts responsibility for as if signing. I don't know what is in it.

A. Yes, I accept.

Q. Mr. Riley, you were asked yesterday about the nature of your management of the J. S. Phipps estate. I would like to ask you how that compared with your duties as to the personal estate of H. C. Phipps and Mrs. Guest, and Howard Phipps.

A. Practically the same.

Q. And generally, what are those duties as to the estates? And by estates, I mean their residences and the land around them.

A. Well, they have certain employees on the estate; they are paid each week, and I in a general way supervise their work; I supervise any repair work that is necessary on the improvements; and when any new construction is done I usually handle obtaining bids, having plans made for that sort of work, and any repairs in the house. I have a staff of men that make repairs on plumbing, carpenter work, painting.

Q. When you made purchases for those estates and for companies that you occasionally do things for, what is the form of making those purchases?

A. We use a requisition system in our office. A requisition is made out to the company or contractor, whoever it might be, that we are ordering the work done, or buying any goods there.

Q. Whose requisition is that?

A. Palm Beach Company's requisition.

Q. You were asked yesterday, and we had some discussion about the ordinary expenses in connection with

the Seminole. Will you tell me what was ordinary for the Seminole, compared with what was ordinary for the Iolanthe? And the Clip, and Mrs. Guest's boat, Dorothy?

A. Well, what was ordinary for the Seminole was, various small repairs that I would authorize, o.k. the bills for and have paid. In the case of the Iolanthe and the Clip and Mrs. Guest's boat the work was approved before it was done, and then in some cases the bill was approved after the work was finished, before the bill was paid.

Q. When you say it was approved before it was done, on the Iolanthe and the Clip and the Dorothy, by whom was it approved?

A. By the owners of those boats; in most cases verbally.

Q. Was that true of the ordinary expenses on the Seminole?

A. No, sir.

Q. You were asked yesterday whether Mr. Martin,—I have forgotten whether Townsend or Bradley Martin, was in Palm Beach at the time of the fire, and you said that you recalled whether he was or not, but you weren't asked what you recall. What is your recollection as to that?

A. I know he wasn't in Palm Beach the day of the fire, because I had a telegram from him the next day, asking that I buy flowers and send them to Abel's funeral.

Q. Where did that telegram come from?

A. It came from New York.

Q. There was some discussion yesterday about when it was you decided to make the charge against the Seminole Boat Company for Abel's pay for June 24, 1935, as it appears on voucher 8320 of Exhibit 3-V. When did you determine that Abel's pay was to be charged for that day, to the Seminole Boat Company?

A. I determined that on the day of the fire.

Q. When did you make the charge?

A. On June 29, 1935.

Q. What part of the day of the fire did you reach that determination as to the charge?

A. In the morning, before Abel left Palm Beach.

Q. You were asked yesterday whether this file of vouchers is all that there were for Abel. Tell me just what you did in that respect.

A. Well, we had a system of filing these vouchers as to name, in alphabetical form; and we went through and got all vouchers that had the name, R. C. Abel, on them.

Q. Who went through and picked them out?

A. Mr. Anderson.

Q. Who did he give them to?

A. He gave them to me.

Q. You gave them to me?

A. I gave them to you or to Mr. Alley.

Q. Did you give me or Mr. Alley all that Mr. Anderson gave you?

Mr. Underwood:

I will ask my friends to accept my statement that is all I received.

Mr. Botts:

All right, we will even stipulate that.

Q. There was some mention yesterday of a trip to Bimini, following the fire. Who made that trip?

A. In the Iolanthe?

Q. Yes.

A. When, did you say?

Q. Who. Who made the trip?

A. I understand you to say, following the fire?

Q. Was it following—I should say, following the lay-up of the Seminole. I am sorry.

A. Mrs. Guest.

Q. Did you find anything that will make your memory certain as to when it was that you and Mr. Phipps first went to Pilkington's yard together?

A. Yes, sir.

Q. What did you find?

A. I found a list of groceries that I had made up at the time the trip was taken, in the summer—August, 1932.

Q. Is that the list?

A. Yes, sir.

Q. Is that what refreshes your recollection?

A. Yes, sir.

Q. What year was it that you and Mr. Phipps first went to Pilkington's together?

A. In August—I mean in about April or May, 1932.

Mr. Matteson:

I shan't offer this, because I don't think it is necessary to encumber the record; but you may examine it if you like.

Q. While Mr. Botts was cross examining you yesterday about what was said by Mr. Phipps on that first trip in 1932, you said, according to my notes, "I couldn't say what was said when we walked through the boat." To whom did you refer when you said, "We walked through the boat?"

A. Mr. Phipps and myself.

Q. Where was Mr. Pilkington when you and Mr. Phipps were on the boat?

A. I don't know, he wasn't in the boat.

Q. Now, you were asked whether on that occasion it is possible that Mr. Phipps may have gone off by himself and talked with others. What is your recollection as to whether he did that or not?

A. I don't remember him going off and talking to anybody.

Q. Do you remember being separated from Mr. Phipps on that occasion at all?

A. I don't remember it, no, sir.

Q. You were asked some more questions about this voucher and these payments to Abel, voucher number 8320 of Exhibit V, and you were asked whether you got authority from Mrs. Guest for that \$10.00 charge, and from Mr. Phipps for the \$45.00 charge, at the time you made the charges. You answered in the negative, as I recall it. Will you tell me anything more you have to say about your authority to charge that \$10.00 and that \$45.00 to Mrs. Guest and Mr. Phipps respectively?

A. Well, I had permission to do the work that that indicates, both on Mr. J. S. Phipps' boat and on Mrs. Guest's boat.

Q. From whom did you get that permission?

A. From Mr. J. S. Phipps and from Mrs. Guest.

Q. In other words they approved those expenses before they were incurred?

A. That is right.

Q. So that you needed no further approval at the time the bill came on for payment?

A. No, sir.

Q. I think you have said Mr. Riley, that your interest was not in the valves and so on that Holm was handling and removing from the boat, on the Wednesday morning. I think it was, following the fire. Do you remember what your interest was centered on at that time?

A. My interest then was entirely, getting the boat out of the boat, and making the funeral arrangements for the body.

Q. You were asked about the employ of Schlappi as engineer on other boats other than the Seminole. Will you tell me where your authority came from, as to that?

A. From the persons who owned those boats.

Q. And was it general or specific authority? That is, did you have general authority to do that; or, when a boat was going to be used, did you get specific authority?

A. In the case of Schlappi, he had proved satisfactory as an engineer, and I had general authority.

Q. Well my point is not quite that. Who was it wanted an engineer when you hired Schlappi for the Iolanthe, for example?

A. The owner wanted an engineer, J. S. Phipps.

Q. As I understand it then, it was the owner that decided that he wanted an engineer, and it was you who decided that he would have Schlappi at that time?

A. Yes, sir.

Mr. Underwood:

That is all.

Mr. Botts:

Listen to this; I want to ask a question and see if this is agreeable: It is stipulated that the document produced by the witness, from which he stated he refreshed his memory as to the date when he and Mr. Phipps visited the Seminole; consists of an itemized list of groceries, and that the only date appearing on it is a pencil memorandum, August, or Aug.—1932.

Mr. Underwood:

Will you read the last part of that to me.

(Statement was read.)

The only pencil memorandum as to date?

Mr. Botts:

As to date, I mean, yes; I said, the only date is a pencil memorandum, August 1932.

Mr. Underwood:

That stipulation is satisfactory to me.

Mr. Botts:

Then we won't have to file the document in evidence.

Mr. Underwood:

That makes it necessary for me to ask a couple of more questions:

Q. When did you find this document?

A. This morning.

Q. Was the date, Aug. 1932, on it when you found it?

A. Yes, sir.

Q. And in whose presence did you find it?

A. Yours and Mr. Alley's and Mr. Anderson's.

Re-Cross Examination.

By Mr. Botts:

Q. As I understand it you found that document this morning?

A. Yes, sir.

Q. Now then, when, previous to today, had you last seen that document?

A. I don't know, Mr. Botts; it has been a long time ago.

Q. Back in 1932, perhaps?

A. Perhaps, I just don't remember when the last time I saw it was.

Q. Now then there is nothing on that document remotely referring to a visit to the boat Seminole or the Pilkington yacht basin, is there?

A. No, sir, not to my knowledge.

Q. Then the connection between this document, and the visit, so far as there is any, is purely in your mind, isn't it?

A. That is right.

Q. Now did you ever have any other grocery list for the Seminole?

A. Yes, sir, I think there have been some others.

Q. Weren't there grocery lists,—weren't there groceries bought for the Seminole in 1931?

A. I don't remember whether there was a trip in '31 or not.

Q. You don't know?

A. No, sir.

Q. Well, after all, about the only connection between the two is that you found a grocery list and that you have some recollection in your mind that the year that those groceries were bought, was the year that you and Mr. Phipps visited the Seminole, is that it?

A. Yes, sir, that is the only trip that I can remember, that was taken during the summer; that was in August.

Q. And your impression now is that in the spring—I believe you fix it about April, to the best of your knowledge?

A. Yes, sir.

Q. —prior to this trip, was the time when you and Mr. Phipps visited the Seminole at Pilkington's yacht basin?

A. Yes, sir.

Q. And that is your best recollection at this time?

A. Yes, sir.

Q. Now then I understood from you in answer to Mr. Underwood's question, that after you had procured these two gasoline slips, the original and the carbon, and had them photostated, you then delivered the original to Mr. Alley and you retained photostats for your file, is that correct?

A. That's the way I remember it.

Q. Yes. Now then this was just about the time, or shortly after you had the photostats made, that you delivered the original documents to Mr. Alley; was it?

A. Yes, sir.

Q. So that would probably be some time in the early part and maybe up to the middle of August, 1935, when you delivered those slips to Mr. Alley? That would be about the time wouldn't it?

A. From the middle of July on through. I don't know just when it would be.

Q. Well, I think the bill for the photostating, I have it in my mind, that is in August.

Mr. Matteson:
August 9th.

Mr. Underwood:

That is the date on the Seminole Boat Company vouchers, but it doesn't follow that that is the date the photostating company was paid.

Mr. Botts:

All right, I just wanted to get it straight in my mind.

Mr. Underwood:

If that date is important we will try to dig out from our files the original bills from the photostating company.

Q. From the time that you first had your attention called to this carbon copy of the slip up until the time that you delivered the same to Mr. Alley, it was continuously in your custody and under your control?

A. Yes, sir.

Q. And from the time that you—probably on the same day as you indicated, secured the original of the slips from the filling station, until you delivered both the documents to Mr. Alley, that original was in your possession, is that right?

A. Yes, sir, except—

Q. Except the time when it was being photostated?

A. Yes, sir.

Q. And that delivery might have been any time from sometime in July to as late as perhaps the middle of August,—that time of delivery to Mr. Alley?

A. Yes, sir; I can't place—I mean I can't designate the exact time.

Q. But anyway, during that whole period you have had the documents?

A. Yes, sir.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Mr. Riley, this slip from which you refreshed your recollection, this typewritten page, it has no typewritten date on it of course, but the date of August 1932 is written across the top.

A. Yes, sir.

Q. Is that a memorandum of yours? Did you write that?

A. No, sir.

Q. I notice that the charge—I suppose it is a charge, the word, boat, is written at the top of page 2?

A. Yes, sir.

Q. Who wrote that?

A. That looks like mine; I wouldn't be positive, but it does look like my writing, yes, sir.

Q. And various little pencil corrections down the page, do you know who made those?

A. This pencil correction of Hormel is mine; and table and packs. I believe that is all of them.

Mr. Matteson:

I would like to have this marked for identification.

Mr. Underwood:

I have no objection.

(Thereupon the said typewritten list was marked Libelants' Exhibit 108 for identification.)

Q. You say you attended Alabama Polytechnic for a year?

A. Yes, sir.

Q. What were you studying there?

A. Architecture.

Q. With respect to this charge appearing on the Seminole books for gasoline and for photostats, dated August 9, 1935, you said in the first part of your testimony this morning that that was not the date on which it was paid. Later on I gathered that you just didn't know whether it was or not; is that the fact?

A. No, I said I feel positive that that is not the date that we made the check out, Palm Beach Company's check to pay that gasoline account.

Q. But you don't know, that is just your thought about it?

A. Yes, sir.

Mr. Underwood:

I will get the check if you have and interest in its exact date.

Mr. Matteson:

At this particular juncture, I don't care.

Q. Where was the Iolanthe at the time of the fire?

A. It was at Palm Beach.

Q. And was Schlappi working on her at that time?

A. No, sir.

Q. This trip that Mrs. Guest made to Bimini on the Iolanthe, to whom were the expenses of that trip charged?

A. I can't say offhand. Mr. Phipps may have given her the trip, or she may have paid for it. I really don't know, without going to the record.

Mr. Matteson:
That is all.

Mr. Botts:
Just one more thing.

Q. What is the name of this man that runs this filling station? Is it Harkness or Harkins?

A. Harkins.

Q. Harkins?

A. Yes, sir.

Q. Now, when you went to Mr. Harkins to get this original of this slip, what explanation did you make to him as to why you wanted it?

A. I just told him I wanted it.

Q. Didn't tell him why?

A. Asked him if he had it.

Q. Didn't tell him why you wanted it, or anything?

A. No, sir, I don't remember telling him.

Mr. Botts:
That is all.

(Witness excused.)

2037 MR. R. A. ALLEY was recalled as a witness on behalf of Respondents and further testified as follows upon:

Further Cross Examination.

By Mr. Botts:

Q. Mr. Alley, you have heard Mr. Riley's statement with reference to the original and carbon of these gasoline slips being delivered to you?

A. That is right.

Q. You recall the circumstance of that delivery to you, do you?

A. Yes, I remember it.

Q. I don't suppose you recall the exact date?

A. No, I couldn't now.

Q. From the time when Mr. Riley delivered those documents to you have they been,—and up until I will say you delivered them to Mr. Underwood, who produced them here in Court,—have those documents been continuously in your custody and control?

A. They were either in my control or in the control of Mr. Scott. That is, I don't recall whether I delivered personally to Mr. Underwood, or whether I sent them to Mr. Scott to deliver them to Mr. Underwood.

Q. You kept them in your safe or files there in Palm Beach until they were ultimately sent to New York, either directly to Mr. Underwood, or for delivery to him, is that right?

A. That is correct.

Mr. Botts:

All right, that is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What was the first you knew about this gasoline ticket?

A. Mr. Riley called me as soon as he had received the bills from the Palm Beach Service Station and told me that he had this gasoline slip, it was a carbon of the gasoline slip. And I suggested to him that he go to the service station and get the original.

Q. When, with respect to the time Mr. Riley called you and told you that he had this carbon that you told

him to go get the original, did you first see the gasoline slips yourself? In other words, did you see the carbon before you saw the original?

A. I did.

Q. Or did you see them both at the same time?

A. I saw the carbon, I think I saw the carbon the day he called me to tell me that he had the carbon.

Q. Was that before or after he had gotten the original?

A. It was before he secured the original. I think when he told me that he had the carbon, I saw it at that particular time, on the same date.

Q. Were the words Seminole Boat Company on that carbon when you first saw it?

A. They were.

Q. Did you give him any instructions about this photostating of the gasoline tickets?

A. I did.

Q. Was it on your instructions that he did that?

A. It was.

Q. What was the purpose of that?

A. I think Mr. Riley gave a very good explanation of that; it was to have a complete record of what had taken place.

Q. How soon after they were photostated did the two tickets themselves come into your possession, do you remember?

A. The two tickets, to my recollection, came into my possession immediately after being photostated.

Q. How soon after that did you turn them over to someone else?

A. I can't recall that; I don't recall the particular time they were sent on to you.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. It was very shortly after that, they were sent on to New York, was it?

A. That is my impression.

Q. All right. Now, Mr. Alley, did it occur to you as a lawyer, that the original, of which you had a replica or carbon copy in your possession, would bear far more evidences of credibility and integrity if it remained in the possession of the filling station until called for, rather than both the original and the carbon remaining in the possession of the same person? I say, did that occur to you?

A. Well, I don't recall whether it occurred to me or not.

Q. It occurs to you now, doesn't it?

A. Well, of course that is true; if a slip came through a source that it had been in all the time up until the time of trial, why that is the better way.

Q. In other words, if, when that carbon was produced, if you had left it with the filling station man and it was brought in in that way, it would have kind — wouldn't have been so good for us, would it?

A. Perhaps that was a mistake I made.

Mr. Botts:

That is all.

Further Re-Direct Examination.

By Mr. Underwood:

Q. What was your purpose in getting the original?

A. In the first place I wanted to see the original; in the second place I wanted to be sure that the original was preserved. I think those are the two reasons.

Mr. Underwood:

That is all.

The Witness:

If we had it in our possession, we knew it would be preserved.

②

Further Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Alley, in your position there in Palm Beach, I think that you have at least two capacities; you were the vice president of the Seminole Boat Company and you are also the representative of Mr. Phipps and the other members of the family, is that right?

A. I think that is true, yes.

Q. In your capacity as vice president of the Seminole Boat Company, I should have thought that your reaction to this slip would have been "Well, this is just too bad; it is not of any value to the Seminole Boat Company"; is that right?

A. Well, I suppose that is strictly true. It does show that the work was done for the Seminole Boat Company, that is very true.

Q. And in your capacity as representative of Mr. Phipps, it appeared to you as a very good piece of evidence, is that right?

A. Well, it certainly to my mind, fastened the responsibility on the party it was on. As you say, I represented mixed parties. I don't remember which particular party's advantage it would be to, at that particular time; but it certainly recorded the true facts.

Q. Then I take it that the interest that you were principally serving, in attempting to authenticate and preserve this evidence, was Mr. Phipps, rather than the Seminole Boat Company; is that right?

A. Well, you are probably right about that, yes. I don't think there is any question about that; no kidding about it.

Further Re-Direct Examination.

By Mr. Underwood:

Q. Did you have in mind that the time for whom you were acting in preserving this thing, or whether you were doing something for one that would be disadvantageous to another?

A. Well, I can't recall my exact mental processes at the time. It may be true that I felt it would protect someone else more than it would the Seminole Boat Company; it probably was true.

(Witness excused.)

(Thereupon an informal recess was taken for three minutes. And thereafter discussion was had between counsel and Court as to the question of handwriting.)

Mr. Matteson:

I am perfectly willing to state on the record, that the exhibits S and S-1, and also a certain number of the tickets that are included in the bunch that have been labeled Exhibit 7, small initials in ink near the corner, at one place I think on the ticket, F. M. H. are the initials of those of one of several handwriting experts—rather of persons whom we have consulted with respect to the authenticity of the handwriting.

Mr. Underwood:

And that those are the initials of Mr. Holt of Jacksonville.

Mr. Matteson:
That is right.

(Witness excused.)

(Mr. Edward J. Anderson was called as a witness on behalf of Respondents.)

Mr. Underwood:

Before proceeding with this witness, your Honor, I would like to offer in evidence the deposition of Anthony Schinigoi, taken at New York on April 19, 1939; the reason being that he was bound north and wouldn't be here in this district at this time. He was the cook on the Seminole on the last cruise.

Mr. Matteson:

(Following discussion.) The question and answer recorded at page 15 addressed to this witness, who was the steward of the Seminole, is this: "You say there were two Mr. Phipps that were on this trip?"

"A. Yes." "Q. How do you recognize the difference between them? Is one an older man and one a younger man, or how is it?" "A. Mr. Phipps—the one that I believe was the owner of the Seminole—I know him a little more because he chartered the Molly-O the year before; and the other Mr. Phipps is maybe a little different—and that is the difference between the two." There is an apparent omission but I think Mr. Underwood is willing to agree that Mr. Phipps who chartered the Molly-O the year before, was Mr. John S. Phipps. Is that correct?

Mr. Underwood:
That is correct.

(Thereupon the said deposition was admitted in evidence and marked as Respondents' Exhibit 4-C.)

2045 MR. EDWARD J. ANDERSON, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name, please?

A. Edward J. Anderson.

Q. Where do you live?

A. West Palm Beach, Florida.

Q. And you are employed by whom?

A. Bessemer Properties, Inc.

Q. How long have you been employed in that office?

A. Since August, 1927.

Q. What is the nature of your work as—

A. Accountant.

Q. What experience have you had as an accountant,—what training?

A. I had a course in accountancy at the City Business College, Chattanooga, Tennessee. I had several years training in—in the office of a C. P. A. and also additional study in the International Accountants Society.

Q. How long have you been working as an accountant?

A. Since 1921.

Q. Have you examined the books of the Seminole Boat Company,—and by that I mean, the document heretofore marked Exhibit 76, Y and Z?

A. I have.

Q. Did you keep those books at any time for any period?

A. Those books were given to me around the first of the year, 1934. I have kept the record since January 1st, 1934.

Q. Are you familiar with the books and—

A. I am.

Q. Have you gone through them and made an analysis of them, at my request?

A. I have.

Q. Is that a copy of your analysis?

A. That is.

Mr. Underwood:

I offer that for identification. This is the document, copies of which were handed to counsel, yesterday.

(Thereupon the said document was marked Respondents' Exhibit 4-D for identification.)

Q. Now, Mr. Anderson, can you tell me how much cash the Seminole Boat Company got in 1928, and from what sources?

Mr. Matteson:

If your Honor please, the books were not kept by the witness at that time. I haven't any objection to what he has read from the books, subject to these facts on cross examination, of course. But I want it understood that he is merely testifying as to what these purported books show.

The Court:

That is all you offer it for?

Mr. Underwood:

That is all I offer it for if your Honor please. I thought that this would be a simple way of getting be-

fore the Court, what these books show as to certain things. * * * It is understood that unless the witness speaks of his own knowledge, that he is testifying to what the books show.

Mr. Botts:

With reference to this summary, is this summary that you have, a summary from the ledger, and does it reflect merely what this journal ledger shows? Or does it also include the information from the voucher files which have been filed in evidence?

A. It is an analysis of the general ledger of the Seminole Boat Company, in connection with these journal vouchers.

Q. Do you mean by that, this information as it appears on this analysis, is taken from both?

A. Both.

Mr. Botts:

You refer to this book which seems to be number 76, that is a combination journal and ledger, is it not?

A. To a certain period, yes.

Mr. Botts:

Now then this summary reflects the data as shown by this exhibit 76 and also 77 and 78? Am I correct?

A. That is correct.

Q. Will you tell me, Mr. Anderson, whether, from the accountant's standpoint, the journal voucher files are considered part of the books?

A. They are.

Q. This analysis which you have made, does it correctly reflect what the books show as to the disbursements made by the Seminole Boat Company,—disbursements made for the Seminole Boat Company by others, and repayments made by the Seminole Boat Company for such persons?

A. It does.

Q. Does this analysis likewise correctly disclose the payments made by the stockholders of the Seminole Boat Company, to repay those disbursements made on behalf of the Seminole Boat Company by others?

A. It does.

Q. I notice that at the upper half of the first page of this analysis there is a narrative; what was the source of the information contained in that narrative? You may look at the analysis if you want to know what I am referring to.

A. The stock register, the general ledger, and the Seminole Boat journal and check-voucher files.

Q. Does that narrative correctly reflect the facts as they appear from those books?

A. It does.

Q. Now prior to the time when the books came to Palm Beach, can you tell me the course of the transaction when a payment was made on behalf of the Seminole Boat Company by the Palm Beach Company?

Mr. Matteson:

You are speaking now as to what the books show, too?

Mr. Underwood:

Of course.

Mr. Matteson:

He has no knowledge himself of what happened before the books came to Palm Beach.

Q. That is right; this is all what the books show.

A. Palm Beach Company would make a disbursement for an expense of the Seminole Boat Company; they would be debit or charge Phipps Realty Account and credit their cash account.

Q. Do you mean by that to say that when the Palm Beach Company in those years made a payment on behalf of the Seminole Boat Company the Palm Beach Company would be repaid by the Phipps Realty Company?

A. That is true.

Q. I take it you have no personal knowledge of how the Phipps Realty Company handled the transaction from then on?

A. Only from information from the records that are available here.

Q. Well, speaking from those records, tell me as much as you can about the transaction from that point on.

A. The Phipps Realty Company would advise Boulevard Mortgage Company of such items; Boulevard Mortgage Company in turn would set up an account crediting Phipps Realty Company and debiting Seminole Boat Company.

Q. That is after the Phipps Realty Company had paid the Palm Beach Company, the Boulevard Mortgage Company would pay the Phipps Realty Company?

A. Not at that time.

Q. Well, eventually?

A. Eventually, yes.

Q. Credit it first on the books and then later pay?

A. That is correct.

Q. And, still as reflected by those books how would the Boulevard Mortgage Company be paid?

A. Phipps Realty Company would collect from the stockholders and notify Boulevard Mortgage Company of such collections; and then of course the entry would be to offset the previous entries made for the disbursement.

Q. Let's see if I understand that. On the collecting end the Phipps Realty Company would debit the stockholders, or in other words collect the money from them, is that right?

A. That is correct.

Q. Having collected the money from the stockholders, would credit the Boulevard Mortgage Company with the amounts on those collections?

A. That is correct.

Q. And on the books of the Seminole Boat Company, those amounts would then be entered as debits to the Boulevard Mortgage Company,—or in other words reflect the fact that Boulevard Mortgage Company had been paid?

A. Would reflect the fact that the Boulevard Mortgage Company had been paid?

Q. Now following the time when the books came into your possession, was there a change made in the method of handling these charges?

A. Do you mean, the company handling the charges?

Q. Let me put my question in another way: Following the time the books came into your possession, they were at Palm Beach?

A. Yes.

Q. Now at that period, when the Boulevard Mortgage Company made a payment on account of the Seminole Boat Company, can you tell us the method by which that payment reaches the books of the Seminole Boat Company?

A. Exactly the reverse.

Q. Of the previous method?

A. Of the previous method.

Q. By that do you mean Boulevard Mortgage Company would charge Phipps Realty Company?

A. Right.

Q. And Phipps Realty Company would credit Boulevard Mortgage Company?

A. Correct.

Q. And Phipps Realty Company would charge Palm Beach Company or Seminole Boat Company?

A. Palm Beach Company.

Q. Palm Beach Company; and Palm Beach Company would credit Phipps Realty Company?

A. Correct.

Q. And then Palm Beach Company would charge Seminole Boat Company?

A. Yes, sir.

Q. And Seminole Boat Company would credit Palm Beach Company?

A. Correct.

Q. Now when the stockholders repaid those expenses, how did those repayments move?

A. Money was received by the Phipps Realty Company.

Q. From the stockholders?

A. From the stockholders. Palm Beach Company was notified—that relieved them of their account.

Q. You mean by that, the Palm Beach Company was credited?

A. That is correct.

Q. With those payments?

A. That is correct.

Q. Palm Beach Company in turn would credit Seminole Boat Company?

A. Seminole Boat Company.

Q. And Seminole Boat Company in turn would charge Palm Beach Company on its books with those credits?

A. No.

Q. Well..you tell me.

A. When the funds had reached—I mean the journal entry had reached the Palm Beach Company's books, crediting Seminole Boat Company, Seminole Boat Company would then transfer its liability to Palm Beach Company, its liability to Palm Beach Company to the stockholders, on the basis of their reimbursement, which was customarily one half each.

Q. In other words, the payment from the stockholders would flow through Phipps Realty Company, Palm Beach Company, down to Seminole Boat Company.

A. That is correct.

Mr. Botts:

And the final offsetting payment would be a charge on the books of the Seminole Boat Company against the stockholders,—or credit?

A. Credit to them:

Q. Now there is one thing I would like to have you tell me a little more about, on this analysis. On the fifth page, under the year 1935, expenses paid by Palm Beach Company, the total is \$5,503.36 and that does not appear to include the cost of the Prigg boat; yet on page 7, for the year 1935, Palm Beach Company, opposite the word "Expenses etc. paid" the total is \$6453.36. Will you explain that difference please.

A. Under the year '35 are listed expenses paid by Palm Beach Company account of the Seminole Boat Company. The purchase of the Prigg Boat is a capital disbursement, and therefore would not appear under the expenses.

Q. How was it set up on the ledger?

A. As a capital account.

Q. It appears as an expense in one place, but as a capital account in the other?

A. Yes, sir, that is correct.

Q. That accounts for the difference?

A. The difference.

Q. Now at what time did you begin to charge Mrs. Guest with a proportionate share of these expenses, instead of Mr. H. C. Phipps?

A. For one half of the expenses, beginning January 1st, 1935.

Q. Do you remember when you were advised that that was to be the practice?

A. About March of '35.

Q. Now, Mr. Anderson, I show you voucher number 52 in the voucher file Exhibit Z. Some question was raised about that, when Mr. Hawkins, I think was on the stand, and he denied that he was an accountant and could explain it. Can you tell me what this voucher means?

A. It means that Boulevard Mortgage Company has set up on its accounts, an account receivable from Seminole Boat Company for certain expenses paid, outside of the Boulevard Mortgage Company's office.

Q. And what is the amount?

A. \$541.50.

Q. And what does that mean as to the accounts payable by the Seminole Boat Company? Does it record anything as to Seminole Boat Company's obligations?

A. It shows their obligation to Boulevard Mortgage Company of \$541.50.

Q. For the items, the three items enumerated,—repairs and maintenance \$116.50, storage \$25.00 and wages \$400.00?

A. That is correct.

Q. I show you bill of Captain Pilkington; I show you voucher number 1190 of the Palm Beach Company dated May 2, 1931; can you tell me whether or not so much of that as reflects the storage on the houseboat Seminole, \$25.00 is the same item recorded on the table before you, journal voucher number 52?

A. That is correct.

Q. That is the same thing?

A. The same thing.

Q. Now the Palm Beach Company duplicate voucher to Seminole Boat Company, \$25.00, written on it in typewriter, in the first instance, is that correct?

A. That is correct.

Q. Was the Seminole Boat Company crossed out and Phipps Realty Company put in, at the Palm Beach office or elsewhere?

A. Elsewhere.

Q. Is that in line with what you have told us about the way these debits and credits moved from the Phipps Realty Company?

A. It is correct.

Q. Did you have a breakdown of the wages, \$400.00, as it appears on voucher number 52?

A. I have a statement showing these; I don't have the supporting data.

Q. I show you letter dated June 28, 1931, with a paper attached marked at the top Boulevard Mortgage Company in account with Phipps Realty Company. Can you tell me whether or not that was the source of the information from which journal voucher 52 was made up?

A. That is correct.

Q. This letter of June 23, is addressed to Mr. Handley at Miami and signed by Mr. LeCount, is that right?

A. That is correct.

Q. On the attached statement there appears, Captain Pilkington storage charge of \$25.00:

A. That is correct, and wages totaling \$400.00.

Q. Yes.

A. That is correct.

Q. And the other item is \$116.50?

A. That is correct.

Q. So that the pencil notation at the right, \$541.50 is the total of the charge shown on journal voucher 52?

A. That is correct.

Mr. Underwood:

I offer the letter and the statement attached.

A. May I suggest that for the sundry items under \$116.50, that you refer to items as listed above.

Q. As they appear in pencil on the statement attached to the letter.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-E.)

Q. Now before we leave this, I show you Palm Beach Company check and voucher number 111 dated April 30, 1931. Can you tell me whether or not that is the basis of the \$200.00 charge in respect to Captain Bryant as it appears on the statement which is now a part of Respondents' Exhibit 4-A?

A. It is.

Q. That also shows that Captain Bryant's pay for that month was originally charged to the Palm Beach Company, against Seminole Book Company?

A. That is correct.

Q. And that charge was changed elsewhere to Phipps Realty Company?

A. That is correct.

Q. Do you know whether that was made at New York?

A. To the best of my knowledge it was.

Q. Where did these duplicates go from your office?

A. To the Palm Beach Company office or Bessemer Properties, now.

Q. In the north.

A. In the north.

Q. It was either New York or Jersey City?

A. Jersey City.

Mr. Underwood:

I offer the voucher and the original check.

(The said papers were admitted in evidence and marked Respondents' Exhibit 4-F.)

Mr. Underwood:

If your Honor please, I could illustrate the way this was done, by innumerable transactions; but at the present time at least I don't think it is necessary to encumber the record by further instances. * * *

Q. Now, Mr. Anderson, Mr. Alley made a suggestion to me which I think I should have thought out myself. When you came down here the other day, a day or two ago, did you go up to the Boulevard Mortgage Company and get out from their files their journal voucher 350, referred to in Seminole Boat Company journal voucher 52?

A. I requested them to get it out.

Q. Is that the document they handed to you?

A. Yes.

Mr. Underwood:

Now it may be I haven't strictly proved it; I can if necessary bring somebody down from the Boulevard Mortgage Company to identify for us their journal voucher 350, which is the one referred to in Seminole Boat Company journal voucher 52. So I offer that in evidence, to show the corresponding transaction on the books of the Boulevard Mortgage Company.

Mr. Matteson:

I have no objection at the moment; reserving my right to ask further proof of examination from the man who made the entries.

Mr. Underwood:

All I ask is on that point, that if further proof is going to be demanded, that it be demanded before the trial closes. * * *

The Court:

It will be admitted subject to that.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-G.)

Q. Mr. Anderson, can you turn to the journal voucher which shows the first payment by the stockholders paid for expenses incurred during the year 1935?

A. We have two journal vouchers regarding the disbursements and expenses for 1935; one for a period January 1, to May 1, and one for May 1 through December 31.

Q. What is the total for the period, January to April?

A. \$2449.81.

Q. What do the books of the Seminole Boat Company show as to the source of that money?

A. That it was advanced by Palm Beach Company.

Q. And who repaid it, and in what amount?

A. It was repaid by M. J. S. Phipps, one half, and Mrs. F. E. Guest one half.

Q. The difference between the halves is a penny?

A. That is correct.

Q. Now I show you a letter dated May 31, 1935, addressed to you by Mr. LeCount of New York, with a statement attached of Seminole Boat Company, January to April, 1935, and tell me please whether or not that is the source of the information, as the result of which you made up this journal voucher number 96 from the books of the Seminole Boat Company.

A. That is the supporting data for journal voucher number 96.

Mr. Underwood:

I offer that.

Mr. Matteson:

I have no objection of it, as his statement of the source of the information from which he made the entries.

Mr. Underwood:

Not to prove the expenses were incurred, of course; but to prove the course of dealings and the whole transaction.

Mr. Matteson:

But this is the source of information from which he prepared this voucher number 96.

The Witness:

That is correct.

Mr. Matteson:

That is what it is offered to show?

Mr. Underwood:

As well as how the charges themselves were made and allocated and repaid.

Mr. Matteson:

Well, this document only relates to the source of the information he got, doesn't it?

Mr. Underwood:

That is correct. * * * I offer it to show whatever it shows.

Mr. Matteson:

Well, I object to it as evidence of disbursement.

Mr. Underwood:

I don't contend for a moment that it shows that these moneys were actually paid by anybody.

(Discussion.)

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-H.)

Mr. Underwood:

I think that is all.

(Following discussion between counsel and the Court as to reporting costs, hearing was adjourned until 2:15 o'clock p. m. of the same day.)

Afternoon Session.

Mr. Underwood:

It is stipulated by all parties that Loyal Randall, a witness on behalf of the Respondent Phipps, who is presently available, would, if called, testify that on April 16, 1935 he went to the Seminole at Pilkington's and removed therefrom certain bed springs and/or beds or cots from the alleyway abaft of the engineroom, and that he did not go into the engineroom at all on that date, and that he brought with him on that occasion a letter dated April 16, 1935, addressed to Pilkington's Boat Yard signed J. F. Riley, heretofore marked Libelants' Exhibit 53, and delivered the same to Captain Pilkington.

Mr. Botts:

We agree to that.

Mr. Matteson:

That is all right.

2062 Thereupon EDWARD J. ANDERSON, a witness produced in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination.

By Mr. Matteson:

Q. Mr. Anderson, you have described to us the manner in which these disbursements were made and were

charged to the Seminole Boat Company and reimbursed, and, as I understand it, it was entirely a matter of debits and credits, and it never represented the passing of any cash or funds through the treasury of the Seminole Boat Company.

A. Are you referring to the expenses paid by the Boulevard Mortgage Company and Palm Beach Company?

Q. Yes; subsequent to the closing of the bank account of the Seminole Boat Company.

A. Those entries were made by journal.

Q. And they did not represent the cash transactions as far as the Seminole Boat Company was concerned?

A. They did not.

Q. So, as I understand it, taking this typical transaction that we have been through, the disbursement was first charged on the books of the Palm Beach Company as a debit to the Seminole Boat Company and a credit to their own account?

A. That is correct.

Q. And periodically a statement of those debits and credits would be sent to the chief auditing office in the north, is that right?

A. That is correct.

Q. Then later you would receive from the same office a statement of the debits and credits that had been forwarded after they had been approved in the chief auditing office?

A. That is correct.

Q. And at a still later time you would be notified of a credit established in favor of the Palm Beach Company on the books of the main office in the north?

A. That is correct.

Q. So, that then your debits and credit on the books of the Palm Beach Company would be canceled out?

A. That is correct.

Q. As far as those items were concerned the transaction would be then complete?

A. It would be a closed transaction.

Q. A closed transaction?

A. Yes.

Q. And that would be true even though there never was any record made on the books of the Seminole Boat Company?

A. Yes; those entries would be made.

Q. So the only purpose of transcribing these entries that had already been made in the books of the Palm Beach Company on a book or record, which you call the record of the Seminole Boat Company, would be merely to record something that had already taken place?

A. That is correct.

Q. Then, as I take it, the final approval of all of these interlocking transactions was with the chief auditing office in the north?

A. Not altogether.

Q. Well, you would send them to them in a certain form and then they would be audited there?

A. May I explain the reason for such procedure?

Q. Surely.

A. Disbursements made through the Palm Beach office for account of Seminole Boat Company and disbursements made in Miami by the Boulevard Mortgage Company for account of Seminole Boat Company would have to be formulated for certain periods before they would enter the books of the Seminole Boat Company, and it was merely for the purpose of getting these two sources of disbursements together into one group before making entries in the books of the Seminole Boat Company.

Q. I appreciate that, but what is in the books of the Seminole Boat Company is merely a transcript of already completed transactions which are fully stated on the books of the Palm Beach Company and/or Biscayne Boulevard Mortgage Company.

A. That is correct.

Q. And the final auditing of those transactions was in the hands of the chief auditing office in Jersey City, or in the north, or wherever it was?

A. That is correct.

Q. So that in keeping any books of the Seminole Boat Company you are separately performing a ministerial act, if you call it that, of recording there the records that already appear on the books of the Biscayne Boulevard Mortgage Company or the Palm Beach Company?

A. That is correct.

Q. For instance, you have referred to this first voucher, number 90, in Phipps' Exhibit "Z", which consists of three pages; it consists of three pages, does it not?

A. It does.

Q. The only thing that you had to make that up from was just this carbon copy of a typewritten statement that came from the office of Mr. LeCount at 465 East 57th Street, New York City?

A. That wasn't the entire supporting data used in preparing these so-called entries.

Q. This letter that I have referred to, Respondents' Exhibit 4-H, is what you used in making up voucher number 90?

A. May I look at the totals; it wasn't used in preparing journal number 90, but journal number 96.

Q. 96?

A. Yes.

Q. Then to change the question, this carbon copy of a typewritten statement that you got from New York with this letter, Respondents' Exhibit 4-H that I have just referred to, was all that you had to make up this voucher 96 from?

A. No, it was not.

Q. What else was there?

A. The original records of disbursements of the Palm Beach office.

Q. They had been sent to New York sometime previous to this?

A. The Palm Beach office retains copies of all—

Q. Of course. Then, I take it, that what you mean is that of course you have your own records and they have been sent to New York and used as a basis of making up the statement there which comes back to you in the form of Exhibit 4-H, and from those records you can determine whether what you sent to New York has been fully approved and recorded on this statement; is that right?

A. In total, yes.

Q. And you can use the Palm Beach Company's records for checking that, but when you make up this record, voucher 96, you make it up from this slip attached to Exhibit 4-H rather than from your own records, don't you?

A. Not entirely.

Q. In what respect can you supplement the typewritten slip, Exhibit 4-H, in making up voucher 96?

A. With the copies of any entries of disbursements.

Q. What purpose was that used for?

A. For the detail; this is a consolidated statement and it doesn't carry the items in detail.

Q. So that when this slip comes back from the New York office it gives you enough information to identify the different items and you apply the details from your own record, is that right?

A. That is correct.

Q. So, as I understand it, the original and the only record, so far as the Seminole Boat Company records are concerned, are found in these vouchers; I mean beginning from the time that the books came down to you beginning with 90 and running through 103?

A. Yes, sir.

Q. I do not mean to mislead you by saying "only record", but I would like to ask you this: Are the items

set forth in these vouchers, numbers 90 to 103, afterwards posted into the various ledger accounts which are kept in this book, Libelants' Exhibit 76 for identification?

A. The procedure is to post all entries from the journals on the general ledger.

Q. Then you refer to this book, Libelants' Exhibit 76 for identification as the general ledger?

A. I do.

Q. So that after these voucher sheets, 90 to 103, were made up from them you made postage of the various items into the general ledger, is that right?

A. That is correct.

Q. So that these voucher sheets, 90 to 103, are made first, and from them postings are made into the general ledger?

A. That is the procedure.

Q. Now, just taking another example at random, I pick up the first voucher in the file of Pilkington, vouchers for the year 1934, which indicates a payment to Captain Pilkington of \$75.00, and a division of that charge on the duplicate voucher shows a part charged to the Dorothy, charged part to the Seminole and part to the Iolanthe, and the charged parties respectively, Mr. F. E. Guest Boats, Phipps Realty Company and Mr. J. S. Phipps Boats; is that right?

A. That is correct. May I say that the original check prepared in the office of Palm Beach Company bears a charge to Seminole Boat Company rather than to Phipps Realty Company. The charge to Phipps Realty Company was applied at a later date.

Q. After the voucher left your office?

A. That is correct.

Q. By the way, the vouchers are made in triplicate?

A. They are.

Q. Where does the duplicate go?

A. To our northern office.

Q. Is that returned to your office?

A. It is retained in the north.

Q. So that this particular voucher, which is a duplicate, apparently came from the files in the north?

A. That is correct.

Q. While we are discussing this, I note that the description of the items is for storage on the Dorothy so much, storage on the Seminole so much and storage on Iolanthe so much, this appearing in carbon copy, and the rest in original typewriting. I suppose that that means that the part that appears in carbon appeared also on the upper half of the original check and that the part that appears in regular typewriting appears only on the duplicate and triplicate copies.

A. That is correct.

Q. Now I would like to follow the transaction from this point exactly as it would occur in your office. I notice that there are headings here; Extensions checked, entered, certified correct, approved for pay, payee, and under certain of these headings initials appear. Those represent different stages of the transaction in your office, I take it?

A. That is correct.

Q. What is the first stage; what is the first state, is that the checking?

A. Of the original invoice.

Q. And that is indicated by the initial under the word "check"?

A. That is correct.

Q. What are those initials on this particular invoice?

A. J. M. Gorham.

Q. What is the next step?

A. The check is then passed on to me and I check it and initial it as to its correctness, and I also "approve for pay" at that time.

Q. First of all, Mr. Anderson, you put your initials under the word "correct", is that right?

A. Correct.

Q. Then you put your initials under "Approved for pay"?

A. That is correct.

Q. Now, Mr. Anderson, I see some other initials under "Approved for pay." What initials are those?

A. In that instance it is R. C. A.; Mr. R. C. Alley.

Q. Then before the transaction goes any further, after you have approved it for payment, it is also approved for payment by Mr. Alley?

A. At that time the check required two signatures, and at the time I approved this that was indication that it was approved for payment and signed and is ready for delivery.

Q. So the "Approved for pay" is put on at the same time the check is signed by the same people who put their initials under "Approved for pay"?

A. That is correct.

Q. Then what is the next thing that happens?

A. The duplicate and triplicate are separated, and the duplicates are periodically sent to the northern office; the triplicates and in some instances the duplicates. In this instance Mr. Gorham at the time marked "Entered J. M. G." which was a practice that was discontinued at a later date, because it was confusing to put it both on the original and the duplicate; it was confusing in the New York office.

Q. I take it that the change that was made was that originally Mr. Gorham would put his initials under the word "Entered" both on the duplicate and triplicate?

A. Well, only on the duplicate. You see, when this check is completed and signed by both parties, it is recorded in the check register and assigned a number. A short time before that time or after that time it is entered in the check register, and for some period of

time—I don't know how long—we made our entries from the duplicates, before forwarding, but at some period since 1927 we discontinued so stating on the duplicate and entirely made that notation on the triplicate.

Q. The triplicate being kept or retained in your office?

A. That is correct.

Q. And that change must have been made sometime after this date of January '17, 1934?

A. That is correct.

Q. But the initials "J. M. G." under the word "Entered" would indicate that from the copy this was posted into the books and entered in some book, is that right?

A. That is correct; in what is known as a check register.

Q. What is the book of the Palm Beach Company in which this transaction is entered as indicated by Mr. Gorham.

A. That is entered in what we call the check register, giving the bank account on it, its number, crediting that account and debiting the various accounts as charged.

Q. You call that the check register?

A. That is correct.

Q. Then what is the next stage so far as your office is concerned?

A. That is as far as our accounting in the Palm Beach office goes.

Q. You say the bank is credited and certain parties are debited. Where do those debits appear?

A. The check register.

Q. In the check register?

A. It is a columnar book with spaces so headed.

Q. For instance, how many columns in that book?

A. It varies. It depends on the number of different accounts that you carry. You can use fly-leaf, and you can have ten, twenty, thirty or fifty, or as many as required.

Q. You mean you have as many as twenty or fifty columns occasionally?

A. That is right.

Q. And among these columns would be there one for the Seminole Boat Company?

A. It is possible that there is one for the Seminole Boat Company; it is also possible that at that time the charges were few and it wasn't necessary to carry a column, and would be carried under miscellaneous and so marked as a charge against Seminole Boat Company.

Q. If it was in the miscellaneous column it would be with a lot of other miscellaneous items, most of which were not charged to the Seminole Boat Company, is that right?

A. Yes, that is correct.

Q. I suppose that you must have some other record that gathers together the items chargeable to the Seminole Boat Company, is that right?

A. We have no records of Palm Beach Company other than the check register book.

Q. Didn't you have a ledger into which you posted from the check register?

A. We didn't keep the books of original entry of Palm Beach Company in the office at that time.

Q. There seems to me that there must be some other record in your office correlating these others than the check register?

A. We carry various records for our information, not for bookkeeping purposes, but purely for information of the officials and heads of the departments; we carry them for reference, so that they at any time can know what accounts are being paid and in what amounts.

Q. What are those books?

A. I can't give them a title; merely a running account.

Q. Running account?.

A. Yes.

Q. As a type of ledger account; do they correspond to a ledger account?

A. The difference between the account that is kept and a ledger account is that it is not balanced out at any period of time; it doesn't carry the capital accounts, and it is not closed out year after year; it is simply totaled across.

Q. What is the description or name you give to these books so that we can have something in common to talk about?

A. You can call it "Summary ledger."

Q. Summary ledger??

A. Yes.

Q. In the summary ledger would there be a sheet headed "Seminole Boat Company?"

A. There would,

Q. And another one headed "John S. Phipps Boats?"

A. That is correct.

Q. Would there be other accounts of John S. Phipps?

A. Yes.

Q. How many different accounts do you suppose you had relating to John S. Phipps personally?

A. That is hard to say.

Q. Just give us some idea.

A. Some ten to twenty, depending on the type of work that was in progress at that time.

Q. Various matters in which he was personally interested?

A. Yes.

Q. In this voucher that we were talking of originally, which is number 5426, I see in this file there are attached to it three bills which aggregate the amount for which the voucher is drawn. Mr. Anderson, I take it the bills are what you call the supporting data, is that right?

A. That is correct.

Q. Does that supporting data remain in your office with respect to the various items paid by the Palm Beach Company?

A. Generally it is attached to the duplicate.

Q. And then that goes to the office in New York?

A. That is correct.

Q. And does it remain there?

A. It does.

Q. It is not returned to you?

A. It is not, unless requested for some reference.

Q. So that these three bills attached to this voucher we have been talking about came back from New York?

A. That is correct.

Q. Apparently for a special purpose, that is, by some special request.

A. By special request.

Q. Taking the various items that are described in this sheet attached to Exhibit 4-H, the supporting data for all of these items would be in the New York office and not in your office?

A. They should be, with few exceptions.

Q. Do you know whether, Mr. Anderson, as a matter of fact you had or have in your office the supporting data for the items on this list attached to Exhibit 4-H?

A. I don't. May I correct that? I don't know what I answered before.

Q. I think that was the purport of your answer.

A. All right.

Q. Taking this voucher number 90, which is the first one that appears here, it says at the bottom of that voucher, "Record disbursements as per statement from New York for year 1934 for account of Seminole Boat Company charged to account of Palm Beach Company". Does that indicate that this voucher number 90 was

taken from a sheet similar to this one that is attached to Exhibit 4-H?

A. It was prepared in connection with the sheet, using our office records enough to give us the details necessary to formulate the journal entry.

Q. And it was a sheet such as that just described here of this nature that I just read as a part of the statement from New York?

A. That is correct.

Q. Do you have that statement with you?

A. I do not.

Q. Now this voucher number 91 is simply a statement of depreciation in reserve set up on the books of the Seminole Boat Company, and it relates to no other corporation at all, is that right?

A. That is correct.

Q. Now this voucher number 92, where does the information for that come from?

A. From the preceding journal entries recording the expenses for the year 1934.

Q. In other words voucher 92 is a summary of 91 and 90?

A. Not exactly; it is not called a summary; that is the entry that closed the operating expenses in the profit and loss for the year.

Q. But as a matter of fact, without being technical about the language, the items that appear on voucher 92 are the summary of the same items that appear on vouchers number 90 and number 91, are they not?

A. That is correct.

Q. Which simply means that you are now preparing a voucher which charges to profit and loss the entire expense represented in the other two vouchers, expenses and depreciation.

A. Yes.

Q. This next one, number 93, covers partial reimbursement to the Palm Beach Company for 1934 disburse-

ments for the account of the Seminole Boat Company. Where does the data for that sheet come from?

A. In the form of advice from our northern office.

Q. That means that you received a statement from the northern office that H. C. and John S. Phipps had been debited with the amount shown and that Palm Beach Company had been credited?

A. No, sir. I received advice that they had paid their expenses for that year.

Q. Of course that transaction took place in the north?

A. Yes.

Q. And you merely received advices of it?

A. Yes, sir.

Q. And the same applies to voucher number 94, which is a statement showing the completion of the reimbursement to Palm Beach Company for the disbursements for the year 1934, is that right; in other words, what you stated about the other one applies to this one, too?

A. ~~Yes~~. May I explain that?

Q. Yes.

A. You say that Palm Beach Company was reimbursed prior to that time. That merely is an entry for the books of Seminole Boat Company to show that the liability for accounts payable on the books of Seminole Boat Company to Palm Beach Company had been shifted or transferred to Mr. J. S. Phipps and Mr. H. C. Phipps.

Q. I notice this check says "Check for Bessemer Investment Company \$220.35"; is that the source of the reimbursement.

A. In that instance it was; we received a check for this one reimbursement.

Q. And that appeared on the books of Palm Beach Company?

A. That is right.

Q. So that came from the books of Palm Beach Company and not from the north?

A. Yes, sir.

Q. Where is the office of Bessemer Investment Company?

A. I don't know.

Q. Is that in the north?

A. I presume it is.

Q. It was from that point that you received this check for reimbursement?

A. This is the check that I received, yes.

Q. Now this next sheet states that it is to cover the purchase of Mr. H. C. Phipps' one half interest by Mrs. F. E. Guest. What does this represent; does it represent the transfer to the credit of Mrs. Guest of the book value of the stock in the corporation, or just what is it?

A. That has nothing to do with the stock. On March 23rd Mr. H. C. Phipps sold his one half interest in the Seminole Boat Company to Mrs. F. E. Guest, and in making this purchase Mrs. Guest received the liability of Seminole Boat Company to Mr. H. C. Phipps in the amount of \$12,947.00.

Mr. Underwood:

Does that represent an acknowledgment on the books of the Seminole Boat Company that it owes Mrs. F. E. Guest \$12,000 and odd dollars in lieu of H. C. Phipps?

A. That is correct.

By Mr. Matteson:

Q. Now this next entry, voucher number 96, shows reimbursement to Palm Beach Company for advances for expense in operation of "Seminole" for the period January, 1935 to April 30, 1935. What does that represent?

A. It represents the payments by the stockholders for the operating expenses for that period.

Q. How was that paid?

A. That was in the form of a letter advising payment.

Q. A letter from New York?

A. Yes, sir.

Q. Now take this next voucher we are talking of, voucher number 96. We were speaking of the last entry which shows reimbursement. Preceding that on the same sheet are expenses and the charge to the corporation for what period?

A. For the period of January 1st to April 30th.

Q. Now where were these items taken from; where did you get the information to make up that sheet?

A. From the original records or duplicate records or triplicate records in the Palm Beach office, and the statements supplied as customary from the northern office.

Q. Then there was a statement from the northern office which was the general basis for the making up of this voucher, is that right, as supplemented by your own record?

A. May I make a statement there, please?

Q. Yes.

A. For this period to the best of my knowledge there were no disbursements included in this journal other than those made in the records in the Palm Beach office.

Q. Even so, the vouchers were sent to the New York office in the usual way?

A. They were.

Q. And after being approved there a statement came back similar to the statement attached to Exhibit 4-H?

A. I wouldn't say that.

Q. That would be the customary thing, wouldn't it?

A. Not unless there were other entries to be considered or combined in this statement.

Q. You don't know whether there was or not?

A. I do not. To the best of my knowledge there wasn't any.

Q. Then we come to voucher number 97. What was the source of the information from which that was made up?

A. Records in the office of the Palm Beach Company, to the best of my knowledge.

Q. They were forwarded to New York in the usual way?

A. They were.

Q. Did a statement come back from the New York office similar to 4-H?

A. I cannot say.

Q. You do not know?

A. No.

Q. Voucher 98 is simply a writing off of the value of the yacht Seminole as a result of the fire, is that it?

A. Yes.

Q. Charged to profit and loss?

A. Yes, sir.

Q. Voucher number 99 represents a collection of 1935 expenses, which I take it, is more or less a summary of the two preceding vouchers, is that right?

A. It is a summary of the operating expenses for the year 1935.

Q. As represented in the two preceding vouchers?

A. In the preceding vouchers. I do not say the two preceding vouchers; I didn't check the vouchers.

Q. Voucher number 100 consists of two pages recording expenses charged to the account of Seminole Boat Company during the year 1936, is that right?

A. That is correct.

Q. And vouchers for those expenses were sent to the New York office in the usual way?

A. They were.

Q. Did a statement come back similar to the one marked 4-H?

A. I don't know; to the best of my knowledge I would say that it did not come back.

Q. Why do you say that?

A. Because of the entries originating in the office of Palm Beach Company which I had access to.

Q. In the natural course of events you sent all of your vouchers for that year to New York, and didn't you receive some kind of a statement from New York with respect to them?

A. It is not customary when it is not requested and it is not unusual.

Q. Voucher 101 is a similar summary of expenses for 1937, is that right?

A. Yes.

Q. All vouchers were sent to New York, of course?

A. Yes.

Q. Was there a statement from New York with respect to those?

A. To the best of my knowledge there was not.

Q. Voucher 103 represents expenses for the last three months of 1938, does it?

A. Yes.

Q. Can you tell us whether there was any statement from New York with respect to those expenses?

A. To the best of my knowledge there was not.

Q. These last statements—with respect to these last three statements you said you were quite sure that there had not been a statement from New York. Where would the supporting data be with respect to those items?

A. In the northern office.

Mr. Matteson:

I do not want to unduly encumber the record, but I would like to have a chance to examine the supporting data for all the items represented in vouchers 90 to 103, inclusive. Can that be arranged?

Mr. Underwood:

That can be arranged, however it will take some time.

Q. The initials on the vouchers would represent the man who entered the transaction in the check register, would they?

A. Generally speaking, yes.

Q. Well, why "generally"?

A. Because there are some irregularities to that due to absences from the offices, absence from the office, and it being necessary to get the items posted and, as I said before, the initials were customarily put on the duplicate voucher at the beginning.

Q. Let me get this right: Do you mean say that if you post an item you might under some circumstances put down Mr. Gorham's initials?

A. No, I wouldn't.

Q. Or that if he posted an item he might put down your initials?

A. No, I do not mean that. I mean that in all instances there might not be initials as to who entered it; it might be a blank.

Q. Well, the man who makes the entry is supposed to initial the voucher when he makes the entry?

A. Not necessarily; I do not know of any rule requiring it.

Q. But it is customary, isn't it?

A. In books of original entry, yes.

Q. Your check register is a book of original "record"?

A. They are for us only and not for accounting purposes or balancing general ledgers.

Q. You wouldn't make an entry and not make your initials and then several days later put your initials on it, would you?

A. No.

Q. The very purpose of having a place for "entry initials" is so that you will initial it right then and know that it is done and you won't have to refer to it again, is that so?

A. Not necessarily.

Q. Well, as a matter of bookkeeping practice, Mr. Anderson, that is good bookkeeping practice?

A. When you are keeping general books, yes, books of original entry, but when you are keeping memorandum accounts you do not always adhere to the rules that apply to "Books of record."

Q. You don't think these accounts you keep in the Palm Beach office are of sufficient importance to follow good bookkeeping practice?

A. We did follow good bookkeeping practice.

Q. Good bookkeeping practice requires that you put down your initials when you make the entry, doesn't it?

A. Not necessarily.

Q. As an accountant of many years' experience would you say that?

A. I would yes. I will say that many entries are made in check registers without any notation, because the checks are numerical and because you couldn't skip one, and in many instances there is only a check mark made, which will show that the voucher had been entered, and it is not necessary to initial a voucher to indicate that it was entered in the cash books.

Mr. Underwood:

You mean "check book"?

The Witness:

They are the same. Check register.

Q. The very purpose of having a place for "initials" is so that when an entry is made you are able at any

moment after that to determine who entered it, is that right?

A. There is never a question on that point as far as this check register we are referring to is concerned.

Q. If you entered an item you would want to have it in such shape that anyone would be able to know who made the entry?

A. That depends on the entry I was making.

Q. You don't think that is important with respect to these books that you keep in Palm Beach?

A. I do not.

Q. Now in these books that were kept in Miami they had similar voucher sheets except that they were all hand written, is that right?

A. I don't know; I didn't check them up. Generally they are hand written.

Q. They have the same spaces at the bottom that you have on your own sheets?

A. Yes, sir.

Q. All of these vouchers that were kept in the Miami office have at least two sets of initials on them, don't they?

A. I haven't examined them to determine that.

Q. Well, we can determine that. Let me ask you about this top voucher number 103; it bears your initials "E. J. A."

A. Yes.

Q. When did you put those initials there; the reason I ask is because I observed that when the document was first produced in this Court there were no initials there.

A. I would not attempt to say that. Ordinarily I would say I would put them on when I posted it.

Q. Isn't it a fact that you put these initials there within the last three days?

A. The fact is I think I put them there last evening. I recall now that I put them there last evening.

Q. And that is true of the second page, is it not?

A. I do not believe it is. You say you have evidence that it wasn't there before and I don't recall that, but I do remember initialing the sheet last evening.

Mr. Underwood:

As a matter of fact, it was done before last evening, was it not?

The Witness:

Maybe it was; it was within the last two nights.

Q. How many sheets did you initial night before last?

A. I don't recall initialing but one sheet; I don't recall initialing two sheets.

Q. You say that you didn't initial the second sheet appearing in this file night before last?

A. I didn't say that.

Q. You don't deny that, do you?

A. I recall initialing it in the last two nights.

Q. Let me get this straight: You recall initialing the first one night before last, but you don't recall initialing the second one night before last?

A. That is correct.

Q. But you don't deny that you may have done it night before last?

A. I don't.

Q. Now I call your attention to the fact that it appears from these records that the vouchers have been both made by and approved by yourself and not by any other person; is that right?

A. As to the posting, yes, but as to approval of the charges in the beginning, from which the vouchers were made, no; they were approved by various department heads.

Q. These original transactions from which these were taken, of which these are summaries, were approved in regular normal course?

A. Yes.

Q. But these voucher sheets that we have here in this file, which you say represent the records of the Seminole Boat Company as it is now constituted, are in no case approved by anyone else than yourself and in many cases are indicated as being approved as well as paid by yourself, is that right?

A. Yes.

Q. And that you recognize as a substantial variation from the method of keeping books in Miami where there are always two initialing, one indicating approval and the other indicating the making and posting.

A. May I be permitted to explain why?

Q. Yes.

A. In the Miami office they have several bookkeepers whose duties are to do certain things. In our office I have duties to perform that several or as many as four perform in the Miami office.

Q. Are you the only bookkeeper in the Palm Beach Company's office at Palm Beach?

A. No.

Q. What other bookkeepers do you have?

A. We have one assistant.

Q. Is Jack Gorham there now?

A. No.

Q. Who is your assistant?

A. Mr. Anthony.

Q. Wouldn't the normal practice be for you to have these made up by your assistant and the approval by you?

A. It wasn't in this case, because I did it.

Q. Now, Mr. Anderson, let me ask you this: You have not said, and I will ask you whether you will say

now: Whether these sheets, vouchers, 90 to 103 were made contemporaneously with the events they record or whether they have been made at some later time. Will you tell me when you made up these sheets?

A. Generally I make up the vouchers for Seminole Boat Company sometime during the first quarter of the following year.

Q. I am not asking you about what you generally do or about general entries with respect to the Seminole Boat Company; I am asking you about these particular sheets that are here in this file that I pointed out to you, and which are a part of Phipps's Exhibit "Z", and I want you to tell me when these particular sheets were typewritten and made.

A. That I could not do.

Q. Isn't it a fact, Mr. Anderson, that all of these sheets were made up at the same time, and at a later date from the records that you had in the Palm Beach office?

A. They were not.

Q. Let me show you the first of these vouchers, for instance, number 90, which bears a date in 1934, and I will ask you when that was made.

A. To the best of my recollection it was made between January and March of 1935. I can refer to this and probably tell you exactly.

Q. Now I will ask you to compare this sheet, which you say was made in 1935, with the sheet which I suppose was made in 1938 or 1939.

A. 1939.

Q. I will ask you to compare the bottom sheet with the top sheet and state if there is not every indication that they were made at the same time, whether or not they are in the same state of freshness and as a matter of fact weren't they made at the same time?

A. My answer to that would be that they show the same signs as the prior vouchers of similar years. For

instance, I see no difference between the voucher 89, dated December 30, 1933, and the one here (pointing) dated December 16, 1931, so far as freshness is concerned.

Q. They are all a good many years old; all going back prior to 1933?

A. Yes.

Q. Now, there are two sheets right in here, right in the middle and they happen to bear the initials "B. H." which are initials other than yours, and I will ask you to look at these and see if they don't look substantially older than the first one I referred to in 1934.

A. I put these initials on myself to indicate that I didn't prepare it, but the stenographer wrote this for me, and those are her initials, however.

Mr. Underwood:

You mean that those are her initials?

The Witness:

I put them down myself so I would know that she typed it.

Q. Mr. Anderson, I am not suggesting any bad purpose on your part because, as I understand it, the records in the transactions would have been complete on the records of the Palm Beach Company, whether these records were kept at all, but I am asking you as a matter of fact if it is not the fact that from 1934 on for a period of years these records were not made up contemporaneously, but at some later time you made these up, going all the way back to the beginning.

A. I did not.

Q. You deny that?

A. I do. I am positive that the one made in 1934 was entirely separate from any others. My statement being that all of these "journals" you referred to were not made up at one time.

Q. Now in your last statement you said that you were positive that the one for 1934 was separate from any others. How about the ones following 1934?

A. 1938 I would say definitely was not prepared at the same time. As to 1935, 1936 and 1937 I could not commit myself, because I do not recall the exact dates that they were prepared.

Q. Why do you remember 1934 better than you do 1935, '36 and '37?

A. Because it was the first year I closed the books of the Seminole Boat Company.

Q. Is it a fact that you made the 1934 sheets in the early part of 1935 and then that you made the 1935, 1936 and 1937 sheets at some later time than indicated?

A. I recall making probably two years at one time.

Q. Which years were those?

A. I would not attempt to say.

Q. When did you make those?

A. If that was the case, I made it in the following year of the last entry that was made.

Q. You mean, assuming for the moment, that they were 1935 and 1936,—you mean that they would have been made together sometime in 1937, is that right?

A. Yes.

Q. And that may be the case?

A. It is possible, yes.

Q. Is it possible that you made three years together?

A. I think not.

Q. What records did you make in 1938?

A. In '38?

Q. Yes.

A. I made in 1938 journal entry number 102 to record the disbursements for the period of January 1, 1938 through September 30, 1938.

Q. As I understand you, there were two years at some period when there were no entries made in the Seminole

Boat Company's books but they were made at the close of that two year period?

A. Yes.

Q. You can't remember when that was?

A. I do not remember.

Q. Now, I want to ask you this, Mr. Anderson: There have been from time to time advances made of payments made by the stockholders to make good the recurring deficits of the company, have there not been?

A. What?

Q. There have been payments made by the stockholders of the corporation from time to time in various ways to make good the recurring deficits of the company?

A. Yes.

Q. And those advances or those payments, if you are going to set up books, have to be put down on the books of the company in some fashion, do they not?

A. They do.

Q. In other words, you have got to have a ledger account into which can be put or posted everything that the company receives or pays out.

A. Are you referring to Seminole Boat Company?

Q. Any company.

A. Yes.

Q. In other words, you have got to have that to balance your books.

A. Yes.

Q. So I take it that when those advances have been made by the stockholders you have set up an account or there has been set up an account in the books in the names of the stockholders and under which they are credited with these payments, is that right?

A. Yes.

Q. And as a matter of bookkeeping that shows a credit to the stockholders and a debit to the corporation?

A. Yes.

Q. Now you do not suggest that there have been any notes given to the corporation by the stockholders for these payments, do you?

A. I know of no notes—do you mean by the Seminole Boat Company?

Q. So that when you referred to this voucher back here, number 95, showing a transfer of Mr. Henry S. Phipps' interest to Mrs. F. E. Guest, what you were telling us was that the amount that stood on the books in the ledger account in the name of H. C. Phipps is credit representing these payments that had been made had been transferred to another account in the name of Mrs. Guest?

A. Yes.

Q. I am looking for a page in the ledger that has entries and postings running over a period of years, and I happen on this one which is headed "Medical expense, Seminole fire." There are entries in there in the year 1935, the year 1936, the year 1937 and the year 1938; is that right?

A. Yes.

Q. And you tell me that the entries in the ledger are taken from these voucher sheets that we have just been discussing, numbers 90 to 103?

A. Yes.

Q. Now during this two year period when you didn't make up any voucher sheets that you can recall, then of course there were no postings in the ledger?

A. Yes; there were no posting in the ledger.

Q. So that for at least two of these years the entries must have been made in the ledger simultaneously, is that right; approximately simultaneously?

A. Approximately, yes.

Q. How many of these years from 1935 through 1938 in this particular ledger account were made at approximately the same time?

A. To the best of my knowledge I would say, referring to ledger sheets, that the years 1936 and 1937 were made approximately at the same time.

Q. You do not include 1938?

A. No, I do not.

Q. You do not include 1935?

A. I do not.

Q. Do you say that all of the entries, beginning in 1935 and running through 1938, are not of approximately the same age?

A. They are not.

Q. They were all made by you?

A. They were.

Q. So wherever we find it in this book, without taking time to go through and look at a lot of different accounts, we can take it that your testimony is that the entries with respect to 1936 and 1937 were made sometime in 1938?

A. I did say only that it was probable they were; I don't recall definitely that those two years were made at the same time; it is possible they were made two or three or six months apart.

Q. But you deny that the entries that relate to the year 1934 were made in any year other than 1935?

A. I do.

Q. Or that the entries in the year 1935 were made in any other year than 1936?

A. To the best of my knowledge they were not.

Q. How much or how large a staff do you have in the Palm Beach office?

A. Generally we have a stenographer, her assistant, myself, my assistant, and Mr. Riley, as far as clerical work is concerned.

Q. You have not named the assistant bookkeeper, have you?

A. That is Mr. Anthony; my assistant.

Q. That is the entire staff in the accounting department; is there any other department?

A. Mr. Riley has the department of operations and maintenance.

Q. Does that have a staff?

A. Yes.

Q. Is that in the same office with yours?

A. It is.

Q. Just what does the Palm Beach office in Palm Beach consist of?

A. The main office, filing rooms and three private offices.

Q. Who have the private offices?

A. The first private office is occupied by Mr. Henry C. Phipps when he is in Palm Beach; the second private office is occupied by Mr. John S. Phipps when he is in Palm Beach, and Mr. Riley occupies the other office.

Q. When Mr. John S. Phipps is in Palm Beach he occupied that office, does he?

A. From time to time.

Q. Is he there quite a bit of the time?

A. I would like to know what you mean by "quite a bit of the time."

Q. You tell me.

A. Sometimes he is there every day, and sometimes he goes for three or four days hand running, and then he will skip a week; it is hard to say what portion of the time he is in Palm Beach that he is in his office.

Q. He just spends a considerable time there?

A. No, not a considerable time.

Q. He takes a great deal of interest in the affairs of the company?

A. As far as my knowledge is concerned I do not know of any personal interest that he showed; I had no conversation or instructions pertaining to the company from Mr. Phipps since my connection with the Company.

Q. His office is next to the one of Mr. Riley?

A. No; the one next to Mr. Riley is Mr. Henry C. Phipps.

Q. The first office is that of Mr. Henry C. Phipps, then Mr. John S. Phipps and then Mr. Riley's office?

A. Mr. Riley's office is the small office leading off of the foyer; Mr. Henry C. Phipp's office is the larger office, and then Mr. J. C. Phipps' office joins Mr. Henry C. Phipps' office on the south. My connection with Mr. John S. Phipps would be to greet him "Good morning"—

Q. Sometimes he comes in pretty early in the morning?

A. I am not there to know.

Q. How many times was he there before you?

A. I never saw him there before I was.

Q. I would hardly think that you would. You have never known of an occasion when Mr. Phipps arrived before you did?

A. I have not.

Q. What time do you go to the office?

A. In the summer time at eight o'clock and in the winter time at nine.

Q. You say Mr. Gorham is no longer with you?

A. No.

Q. Where is he?

A. He is connected with the Coastal Realty Company in West Palm Beach.

Q. What other employees have you still in the office that were there in 1935?

A. In the accounting department?

Q. Yes.

A. Mrs. McDougall, Mr. Riley and myself.

Q. Are they all there now?

A. Yes.

Q. That is all?

A. May I make one correction as to the personnel of the accounting department?

Q. Yes.

A. Mr. Riley, has Mr. Glazier who takes care of his errands and so forth, and he also pinch hits as a time-keeper on the payrolls—

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Anderson, as I understand, these Seminole books, so far as being an actual record of what has transpired, are more or less a superfluity, is that right?

A. I would not say that it was a superfluity.

Q. All right; those simply reflect what has already been recorded in some other books of record, is that true?

A. Yes.

Q. And those other books and records are of the Palm Beach Company primarily, is that right?

A. It depends on the period covered.

Q. From 1934 on?

A. Yes.

Q. Then the actual disbursements from 1934 would be reflected in the books of Palm Beach Company and in the ledger account of that company?

A. It would be reflected in the Palm Beach Companies' books up to January 1, 1937 and in Bessemer Properties' books from 1937 on.

Q. And this Seminole Boat Company was not an active trading company or anything of that kind?

A. Not to my knowledge.

Q. So that as a matter of fact, for all practical purposes, just occasionally when you had the time you would go in and bring the Seminole Boat Company's books up to date; was that the way it was handled?

A. Not exactly.

Q. Well, it was something along that line, wasn't it?

A. I did it at the first opportune time for the preceding year in the first part of the next year as possible.

Q. For instance, I notice here under the account of "Salaries", that there are some twenty or thirty entries all under date of December 31, 1935. Now that was an accumulation of practically the whole year, is that right?

A. Are you referring from this period of 1935?

Q. Yes.

A. To—

Q. To where the account seemed to end?

A. Yes, that is an accumulation.

Q. Now getting over to these medical expenses, those were all entered for 1935 under date of December 31st, weren't they?

A. Yes.

Q. And the same is true under this sundry account for 1935; that is all reflected under one date, I believe?

A. No. It is reflected in June and December, and at this time I would like to make a statement of one or two instances as shown by the journal vouchers posted to this general ledger; during some years there was a statement made and generally prepared for a part of a year and it wasn't carried over to the following year.

Q. When you allowed this two-year period to elapse without posting anything to the books of the Seminole Boat Company, did you receive a request from anybody to bring these up to date?

A. Not to my knowledge.

Q. You just happened to get around to it after a couple of years?

A. Not exactly that.

Q. How was it?

A. For instance, one of the principal reasons for holding up, if I did, 1936 and 1937, was to know the charges of medical expenses to the Seminole fire.

Q. You knew them as you went along, didn't you?

A. Yes.

Q. You mean you wanted to find out how they wanted you to charge it, is that right?

A. Yes.

Q. You didn't know whether they were going to charge it to Mr. J. S. Phipps, the Seminole Boat Company or Palm Beach Company or just how?

A. I won't say that. I definitely knew that we wouldn't charge it to Mr. J. S. Phipps.

Q. How do you know that?

A. The same as I know they wouldn't charge it to me or to you. There would be no occasion to charge it to him.

Q. You didn't know whether to charge them to Palm Beach Company or Seminole Boat Company?

A. I won't say that, because Palm Beach Company had already disbursed it.

Q. You entered it in the books of Palm Beach Company?

A. Yes.

Q. And you just waited to find out whether or not they wanted you to go through the formality of setting up these entries in reference to this corporation that had no assets and was performing no functions, and you just wanted to know whether they wanted you to go through the detail of writing it down, is that the idea?

A. It is not.

Q. There must have been some reason for waiting.

A. I stated my reason.

Q. All of these items were charged to somebody when they were first made?

A. Charged on the books of Palm Beach Company to Seminole Boat Company. Before placing them on the books of the Seminole Boat Company I had to find out whether it was proper to put it on there. At that time

there was no one present that I could get the information from or to advise me what I should do with them.

Q. You mean Mr. Phipps wasn't there?

A. Mr. Riley. I had never consulted Mr. Phipps relative to charges.

Q. Mr. Riley was there all the time, wasn't he?

A. I don't believe Mr. Riley is capable of passing on whether a charge should be put on the books or not.

Q. Who was it that you waited to get advice from?

A. Mr. Alley.

Q. He was there all the time, wasn't he?

A. Yes.

Q. Why did you wait two years to get that advice from him?

A. Waiting for the approval of it before posting it.

Q. You waited two years to get his approval?

A. I haven't said that I waited two years.

Q. Did you?

A. I said if it was two years, 1936 and 1937, then I waited two years for that purpose.

Q. Now, Mr. Anderson, you know whether it was two years or not, don't you?

A. No, I don't.

Q. Don't hedge with us; you know now, don't you?

A. I don't know whether it was 1936 or 1937; I told you I thought I held up postings for two years.

Q. Now, don't you know?

A. I don't.

Q. Your memory is an absolute blank on that question?

A. It is not. To the best of my memory I did hold up two years, but which two years I don't remember.

Q. Let's just assume that your memory has not failed you entirely and that you did hold it up for two years,—now that wouldn't be a violent assumption, would it?

A. No.

Q. So then for two years you held up making these entries because you wanted to get advice from Mr. Alley who was there daily in the office; is that your explanation?

A. Mr. Alley maintains an office in West Palm Beach.

Q. He was in the office daily, wasn't he?

A. No.

Q. He was in the office weekly, wasn't he?

A. He was not.

Q. How often did you see him?

A. Oh, on many occasions.

Q. And those many occasions over the period of two years,—you had no occasion during those two years to see Mr. Alley to get advice from him; is that your explanation?

A. I merely requested authority to post my books and waited for authority, and when it was given to me I posted my books.

Q. I see. Then you asked for authority and they didn't tell you for two years; is that the idea?

A. If that is the case, yes.

Q. If it is the case; don't you know?

A. I am not admitting that I wanted two years before posting the books. I said there was a possibility that there were two years posted at one time, and if I am given sufficient time I could check my records and find out about that.

Q. That is a rather unusual bookkeeping custom, is it not?

A. What do you mean by unusual bookkeeping practice?

Q. To delay two years with reference to posting your books.

A. Yes.

Q. And the only explanation is, as I understand it, that you asked Mr. Alley for advice as to how you

should post it and then he delayed for approximately two years in giving you that advice, and therefore you delayed in making the entries; is that your explanation??

A. I can only repeat—

Q. Just tell me is that your explanation? Answer that yes or no.

A. I can't answer that yes or no. As I said before, if there were two years posted—

Q. You know there were two years, don't you?

A. I don't. I will admit that if there was any delay in posting of the entries in the books of the Seminole Boat Company for any period, that it was due to the fact that I was waiting for advice or authority to post it in the books.

Q. And it took them two years apparently to decide how they wanted them posted?

A. I can't answer that.

Q. As a matter of fact you have dodged here several times; isn't that a fact; that is the fact, isn't it?

A. It is not. I am not saying that I didn't wait for two years and then have my records contradict me.

Q. We will be liberal; we won't hold you to "exact two years"; we will say approximately two years. Will that help you any?

A. No, it wouldn't be of any help.

Q. Now then, Mr. Anderson, your recollection about the actual facts of the posting for this period of time is quite hazy, is that right?

A. Yes.

Q. Then how do you know that you didn't post for three years during that time?

A. For the reason that my records before me indicate that I did not.

Q. How do you know that 1935 or 1934, was not included in that hiatus period?

A. For the simple reason that it was the first year that I closed out the books of the Seminole Boat Company, and I discussed the depreciation rates with Mr. Riley for that year.

Mr. Underwood:

What year was that?

The Witness:

I was answering for the year 1934.

Q. For the year 1934 you discussed some depreciation rates for practice with Mr. Riley before you made your entries?

A. That is correct.

Q. Then you made your entries for 1934?

A. Correct.

Q. Am I right in the understanding that at approximately the same period you made your entries for the entire year 1934, is that right?

A. I don't understand the question.

Q. My understanding is that the posting of your Seminole Boat Company's record was a sort of skip and stop proposition. That is, you would post them for a considerable period of time, and then allow a period to elapse and then you would post them up again?

A. Yes, sir.

Q. Did you post for the entire year 1934 at one time; can you tell me that?

A. May I have my journal entry, please?

Q. Certainly.

A. Yes.

Q. Then for the year 1935 when did you do your posting there; what is your best recollection?

A. That year was divided. I posted the period of January 1, 1935 to April 30, 1935 sometime after April,

1935, a short period of time; the exact period of time I don't know.

Q. You posted up to that time and the balance of 1935 was posted at one time probably in 1936?

A. In 1936, yes.

Q. Then there was this hiatus of approximately two years covering the years of 1936 and 1937. Now during that hiatus period you didn't wait to make the entries in the Palm Beach or Bessemer properties' Books for the same period, did you?

A. In those periods I merely recorded the checks and entered the receipts on the cash books, having never posted the general ledger or the records of the Palm Beach Company.

Q. You mean these disbursements in those years, which amounted to substantial sums of money, were carried in suspense in the records of Palm Beach Company as far as permanent ledger records are concerned?

A. I couldn't answer that question because I didn't keep the records.

Q. You were in charge of the records of the Palm Beach Company?

A. I was not.

Q. Weren't you the bookkeeper for Palm Beach Company?

A. The books of the Palm Beach Company were kept in the northern office.

Q. Didn't you keep some books there?

A. I kept the running accounts only.

Q. And that is all you kept?

A. That is all I kept.

Q. You didn't have any ledgers there in Palm Beach as to the Palm Beach Company or Bessemer Properties?

A. I did since the year 1937.

Q. All right; 1937 was one of those "Suspense" years; how did you reflect these expenses in your ledger ac-

counts during 1937; for instance, you didn't hold those in suspense, did you, until you got advice from Mr. Alley?

A. I will have to refer to the accounts to see if the Phipps Realty Company reimbursed me for those years. I cannot remember the account. The general procedure was that all charges for "Account Seminole Boat Company" by Bessemer Properties were reimbursed by Phipps Realty Company.

Q. Now is there any difference between the journal record there for the year 1935, for instance, and that of 1936 and 1937?

A. Is there any difference?

Q. Yes.

A. As to what?

Q. As to their general nature.

A. There should not be.

Q. Is there; you have them.

A. I will have to examine them to see.

Q. Do so.

A. They are generally in the same form.

Q. What I am trying to get at is this: How can you refer to these journal records and say that 1935 was posted definitely at a certain time and you cannot give the same information with reference to 1936 and 1937? Will you enlighten us on that subject?

A. Due to the records as posted here, they indicate clearly that the posting for the year 1935 was a separate date, also coupled with my knowledge of the setting up of the depreciation for the year 1934; and the year 1935 indicates from the postings that it was posted separately; 1936 and 1937 are very similar in posting, and I can remember 1938 because it was recent postings.

Q. What is it with reference to 1935 from which you draw the conclusion that 1935 was posted prior to 1936 and 1937?

A. It has come to my memory since looking at the postings in the journals that at the time of the first journal entry here, at the time of the purchase of the Seminole, we prepared an entry to determine liability at that time, and it was afterwards that I was informed that Mrs. Guest would bear one half of the expenses from the first of the year.

Q. That was posted at the end of 1935?

A. No; it is a split journal entry; it was posted for two periods.

Q. How do you know that that was posted at any particular date?

A. Because I prepared it and posted it.

Q. You prepared and posted others, didn't you?

A. I did, yes, and I have an incident to refresh my memory on due to the fact that at that time Mrs. Guest bought a one half interest in the Seminole, and for that period I prepared the journal entry and posted it and determined the liability.

Q. You are talking about postings you made up to April, 1930. How do you know the postings for 1935 were made in 1936?

A. Those postings were made probably in the first part of 1936, to the best of my knowledge.

Q. Probably, but you don't really know.

A. I won't say definitely, because I haven't had any occasion to determine that.

Q. Did you get the authority from Mr. Alley at this— at the time you made the postings for the year 1935, which you stated you made early in 1936, you got the information from Mr. Alley then as to how to make these postings, did you?

A. Let me refer to this (book) and I will tell you.

Q. All right.

A. I believe, to the best of my knowledge that the journal entries for 1935 were posted early in 1936, but

under what circumstances and conditions I do not recall.

Q. Then after that posting you probably waited for about two years before you made any other postings, is that right?

A. I probably waited, yes.

Q. Now, then, as I understand it, your reason for the delay of about two years was to get an answer from Mr. Riley as to how they were to be posted; right?

A. That is correct.

Q. Now then would you mind pointing out to me what the substantial difference is between your postings for the latter part of 1935 and the ones for 1936 and 1937 that would cause you to have any especial advice; I refer particularly to the accounts here designated "Medical Expense" and the "John Thomas Expense".

A. Assuming that I had authority for the posting of the latter part of 1935, I would have secured the same before posting 1936; giving me authority to post the latter part of 1935 would not give me authority to post 1936.

Q. They are identical character of items?

A. Generally speaking they are.

Q. You still waited for two years to frame the—

A. I do not admit that I waited two years.

Q. I know that, and I don't think that is a violent presumption, is it?

A. All right.

Q. Now there hadn't been anybody that came down to you and suggested "We might be taking testimony pretty soon in this case and we had better get these books in shape"?

A. They did not.

Q. You are sure about that?

A. I am positive.

Q. That's fine. Now then you have a summary here summarizing these books from the organization of the

Seminole Boat Company to its substantial demise when the boat was burned in 1935 and from then on; would you mind telling me during that period of time, the entire period, how much Mr. John S. Phipps contributed?

A. According to the books?

Q. I want the facts.

A. I can't give you the facts other than the books.

Q. How is that?

A. I base my statement on the books.

Q. All right.

Mr. Underwood:

What is the period?

Mr. Botts:

From the beginning to the demise of the Seminole Boat Company.

Mr. Underwood:

What do you mean by "demise"?

Q. To the present time.

A. My statement I prepared doesn't cover the present time.

Q. Up to what point does it cover?

A. June 22nd, 1935.

Q. From the beginning and up until that period what was the contribution, please, of Mr. J. S. Phipps and Mr. H. C. Phipps and Mrs. Guest individually?

A. Mr. J. S. Phipps \$13,665.63, Mr. Henry C. Phipps \$12,440.72 and Mrs. Guest \$1,224.90.

Q. Now since that time the stockholders or either of them as far as you know have not contributed officially and irrevocably anything to the Seminole Boat Company, is that right?

A. To the best of my knowledge they have not.

Q. Palm Beach Company during that period has disbursed how much and charged the same to the Seminole Boat Company?

A. I will have to refer to the records to give you those figures.

Q. Do it.

A. I do not have them before me.

Q. This summary of yours doesn't cover that?

A. It does not.

Q. Could you from these books?

A. I can give you the items.

Q. If you will give us the items maybe we can total them.

A. Do you wish the net amount?

Q. I would like to have the various items, if you don't mind.

A. Do you want them individually?

Q. Yes; give us the individual items and then the totals.

A. For the year 1935, \$4,003.55; for the year 1936, \$7,952.81; for the year 1937, \$1,008.00 and for the year 1938, \$615.00 and \$300.00.

Q. Total?

A. \$13,879.36, less \$950.00 representing sale capital assets "Prigg Boat", being the price as set up on the books of the Seminole Boat Company.

Q. As I understand it, these net amounts, totaling slightly over \$13,000.00, are charged on the books of the Palm Beach Company against Seminole Boat Company.

A. They were, yes; but whether these were reimbursed to us by cash by Phipps Realty Company, I will have to refer to the books to give you an answer.

Q. So far as you know that amount has not been reimbursed indirectly from the stockholders of the company as yet?

A. I don't know whether it has been reimbursed or not.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. You have not ever received any pay from the Seminole Boat Company, have you?

A. I have not.

Q. Your employment has been entirely with the Palm Beach Company and its successor company?

A. Yes.

Q. I understood you to say that you have so many accounts that you did about four times as much work as bookkeepers in the Miami office?

A. No, I did not mean to infer that; they have a bigger volume of work, and it requires more employees.

Q. In other words, this matter of the Seminole Boat Company's books was just some additional work to what you already had?

A. Yes.

Q. You spoke of your recollection about 1935 being fixed by the transfer of certain disbursements from H. C. Phipps to Mrs. Guest. Do I gather from what you stated that you had made a charge to H. C. Phipps and that you had to change it?

A. I was instructed to.

Q. You were instructed to change it?

A. At first I was instructed that Mr. H. C. Phipps would pay in one-half of the expenses to the date of sale; later I was informed or instructed that Mrs. Guest would assume the one half of the expenses from the first day of January, 1935.

Q. Did you in the first instance make up a journal voucher showing the charge of this expense to H. C. Phipps?

A. I will have to refer to that journal.

Q. The one that you have here now shows that it is charged to Mrs. Guest, but from what you said I rather

gather that you may have made up one charging it to H. C. Phipps.

A. Before the journal is prepared we make up a working paper.

Q. You have this voucher here, voucher number 96, which shows the charge to Mrs. Guest and Mr. J. S. Phipps. What I am asking you is whether you had previously made up one like this which was necessary for you to discard and substitute this.

A. No, the journal vouchers were actually prepared.

Q. This voucher 90 for 1934, has that been recopied since it was first made?

A. No.

Q. Have any of these documents been recopied since they were first made?

A. Not to my knowledge.

Q. Are these supposed to be the original sheets as originally prepared, is that right?

A. That is correct.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Anderson, you have stated that there was a time when some payments were held up and not posted for a period; that is correct, is it?

A. Yes, sir.

Q. Although they had been paid by the Palm Beach Company, is that correct?

A. Yes.

Q. Now were other items held during that period that were not posted in the books of the Seminole Boat Company after you got your advices from Mr. Alley; in other

words, were you holding up other items in addition to those which you later posted in the books of the Seminole Boat Company?

A. Do you mean to infer that of the items I was holding that some were eliminated and not posted on the books of the Seminole Boat Company?

Q. Yes.

A. Yes.

Q. Do you remember how you posted those other items when you were finally given instructions?

A. I don't recall now.

Q. Let me ask this to refresh your recollection: Did you post these items as legal expense against the account of John S. Phipps?

A. I hesitate to say because I don't recall.

Q. Do you remember what the question was that caused the delay in posting certain items during certain periods?

A. The question was whether they were legitimate charges for Seminole Boat Company.

Q. As I understand it, you do not now remember how you posted the other items that you were instructed not to put in the books of the Seminole Boat Company?

A. No, I do not.

Q. Now, Mr. Anderson, I would like to get from you a picture of these books as they existed at the time of the fire. As I understand it, all of the journal vouchers in Exhibit "Y" had been made long prior to the fire, the last one being dated in November, 1929.

A. Yes.

Q. Which is the last voucher in Exhibit "Z" that was made prior to June 24, 1935?

A. To the best of my knowledge number 96, for the period of April 30, 1935.

Q. Can you tell me definitely whether or not that journal voucher was made up and entered in this book or this file prior to June 24, 1935?

A. To the best of my knowledge it was.

Q. What date does it bear?

A. To the best of my knowledge, June 22nd.

Q. You can read that on it?

A. Yes; I presume I posted it the day that I made it.

Q. I was not asking you about posting these figures in the ledger. I was asking you about the making up of the voucher itself, these two sheets of paper which are dated June 22, 1935, and bearing voucher number 96. When, with reference to the date June 22nd, were those pages of paper typewritten?

A. On that date.

Q. Was or was not these two sheets of paper a physical part of the records of the Seminole Boat Company on the morning of June 24, 1935?

A. They were.

Q. Would it be possible for you to go through the ledger and pick out the entries that were made in that book on or before June 24, 1935?

A. Yes.

Q. Perhaps, I can cover that by general questions. I notice that these sheets in the ledger have two columns headed by the word "date". What is the date that is entered in these books, the date when the expenses are incurred or the date that the entry is made?

A. The date when the entry is made.

Q. Is it a fact that every entry in this book that bears date before June 24, 1935, was in this book on that date?

A. It was.

Q. Now, you were asked, Mr. Anderson, about the initialing of the voucher number 103. Will you tell me the circumstances of that?

A. I recall looking at it and I said, "Well, this hasn't been initialed; I had better initial it".

Q. Do you remember saying anything when you did it?

A. I believe I said something but I don't recall the comment.

Q. Did anybody tell you to do it?

A. No; free will.

Q. Do you remember where that occurred?

A. In my room at the hotel.

Q. It was my room, wasn't it?

A. Yes, it was your room.

Q. Were you sitting on a little settee?

A. Settee, yes.

Q. In front of the desk?

A. That is right.

Q. And that was the evening those books were delivered to me or to my room by Mr. Matteson's messenger?

A. Yes. I believe that Mr. Riley was the one that commented when I initialed it.

Mr. Matteson:

Do you remember what he said?

The Witness:

No, I don't.

Q. Now, you were asked about your voucher 102. Do you remember whether when you put your initials on that it was at the same time or previous?

A. That was the previous day.

Q. You did that previous to the date of the voucher?

A. It should have been the same day.

Q. What is your recollection of that; I want your recollection and not what it should have been.

A. That it was the 30th of September, 1938.

Q. I notice another voucher here, number 96, bearing date June 22nd, 1935. That voucher doesn't seem to have any initials on it at all, is that correct?

A. That is correct.

Q. So it is not unheard of that vouchers are made up and filed without being initialed?

A. That is correct.

Q. Did you at any time go to this voucher file for the purpose of initialing the vouchers that had not been initialed?

A. No. I had my pencil in my hand and I noticed that the initials were not on it; I just glanced at it, and I noticed the initials were omitted and I said, "I had better put it on here."

Q. You did it spontaneously?

A. Yes, without considering it.

Q. Without previous discussion?

A. Correct.

Q. Is that the fact?

A. That is correct.

Q. Now about these other journal vouchers, Mr. Anderson; there has been so much cross examination on them that I am not quite clear about one or two things: Voucher 97 bears date December 31, 1935; is that the date through which the records go or is it the date when the journal entry was made?

A. That is the date through which the records go.

Q. What is your best recollection as to when that was made up and put in the file?

A. To the best of my recollection it was put in the files in the early part or the first of the year 1936.

Q. Now there is some question in the minds of some of us about the purpose in sending your duplicate vouchers, with the supports, to New York, and the purpose of the Boulevard Mortgage Company doing the same thing. Will you tell me what the purpose of that was?

A. Because the books of original entry were in that office.

Q. Just what do you mean by books of original entry? To us lawyers I think it means something else.

A. It is books of account, books in which the corporation shows its profits or losses.

Q. You do not mean that those are the books in which the entry is first made in point of time?

A. No.

Q. For expense incurred by the Palm Beach Company the books which you kept there are those which in point of time the original entries are made, is that correct?

A. That is correct.

Q. I would like to have it clear how these expenses incurred on behalf of the Seminole were posted in the books at Palm Beach.

A. Merely on a memorandum account headed "Seminole Boat Company."

Q. They are actually charged as accounts receivable from Seminole Boat Company, is that right?

A. That is right.

Q. When is that charge made with reference to the issuance of the checks in payment of these expenses?

A. As approximately as close to the date of the checks as possible.

Q. You were asked whether or not the supporting data for the vouchers were retained in New York and I think you said that was true of the Palm Beach Company. Do you know whether that is true of the Boulevard Mortgage Company's expenses?

A. I don't know.

Q. You were not testifying as to that company?

A. I was not.

Q. Mr. Anderson, I note that journal vouchers 90, 91 and 92 and 93 bear pen and ink date "12/31/34". Are those your figures?

A. They are.

Q. What does that date indicate?

A. That is the year for which the voucher covered.

Q. Look at journal voucher 92. Is that made with reference to the books of any other company or is it made solely for the purpose of the Seminole Boat Company?

A. Solely for the purpose of the books of the Seminole Boat Company.

Q. How about voucher 93?

A. That is made solely for the books of the Seminole Boat Company.

Q. How about 94??

A. That is made solely for the books of the Seminole Boat Company.

Q. No other company involved?

A. No other company involved as far as that journal itself is concerned.

Q. These we have just talked about are made up solely as a part of the records of Seminole Boat Company?

A. That is correct.

Q. No other purpose served by them?

A. No other purpose whatsoever served by them.

Q. How about 95?

A. The same.

Q. How about 96?

A. The same.

Q. How about 97?

A. The same.

Q. Tell me whether or not that is true of the balance, 98 to 103, inclusive.

A. It is.

Q. What was the purpose of making up those journal vouchers?

A. To record the expenses and happenings of the Seminole Boat Company on their books of entry.

Q. It was put to you that these were entries of transactions that had already been closed. Will you tell me whether or not that is true of the Seminole Boat Company prior to the time these journal entries were made?

A. I don't believe I am qualified to state whether or not they were closed entries at the time these journal vouchers were prepared.

Q. Will you tell me whether or not entries in account books generally are made to record transactions that have already taken place?

A. Except that way.

Q. That isn't true exclusively of those journal vouchers of the Seminole Boat Company?

A. No.

Q. Or the ledger accounts?

A. No.

Q. Will you tell me whether or not entries in the books of the Seminole Boat Company recording its liability to others was for the purpose of recording that liability?

A. Yes.

Q. Will you tell me the names of the persons in the office at Palm Beach in 1935 as well as you remember those who had desks in the office, those who had office employment as distinguished from those on the outside.

A. Mrs. McDougall, Mr. Gorham, myself and Mr. Riley.

Q. Have you omitted the stenographer?

A. I can't recall whether we had a stenographer at that period or not.

Q. How many sets of books did you keep there at that time?

A. Memorandum records and running accounts for the Palm Beach Company, the Seminole Boat Company, Ocean Island Corporation, Beach and Pool Operating Corporation and Lakeworth Company.

Q. How about Boca Raton Company?

A. We didn't keep the books of the Boca Raton Company.

Q. How long of each day has Mr. Phipps been in the habit of spending in the office when he comes in?

A. Anywhere from five minutes to an hour or two.

Q. Has it been his practice to stay there all day?

A. I never knew him to.

Q. Who is the elder Phipps, H. C. or J. S.?

A. Mr. H. C. Phipps.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. Just to complete the record would you mind taking a pencil and writing on that pad "Seminole Boat Company?"

A. Do you wish "company" spelled out or abbreviated?

Q. Just "Co."

A. (Witness complies.)

Mr. Underwood:

Suppose you write your name on there.

The Witness:

As I sign my signature?

Mr. Underwood:

Yes.

The Witness:

(The witness complies.)

Q. Write it a couple of more times down below there, if you don't mind.

A. (Witness complies.)

Mr. Botts:

You can just file this as Mr. Pilkington's next exhibit.

(Thereupon the paper upon which the witness made notations at the request of Messrs. Botts and Underwood was marked Pilkington's Exhibit number 10.)

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Anderson, I want to be clear about this. You say now that on voucher 103 you wrote your initials night before last, is that right?

A. That is correct.

Q. On voucher number 102 you wrote it approximately the date it bears at the top of it, which date is September 30, 1938?

A. To the best of my knowledge, yes.

Q. Is that the fact or is it not the fact?

A. To the best of my knowledge.

Q. Well, Mr. Anderson, did you write the one on the second page within the last two days?

A. I did not.

Q. You are positive of that?

A. I am.

Mr. Matteson:

If your Honor please, I would like to ask a privilege here. Night before last when I had these books in my possession I made a very careful record of the initials appearing on the various sheets, and I have this record in my hand at the moment, and I would like to have it marked for identification and then I would like to entrust it to the stenographer.

The Court:

How do you want it marked?

Mr. Matteson:
For identification.

(Thereupon the document produced by Mr. Matteson above referred to was marked Libelants' Exhibit 109 for identification.)

Mr. Underwood:

May it be agreed that that paper has been in the Court-room the entire day?

Mr. Matteson:

Yes; it was in my valise and I slipped it out after the witness testified with respect to the initialing of these sheets, and that is the first time I had seen it today.

The Court:

All right. Does that conclude Mr. Anderson's testimony?

Mr. Underwood:

Yes.

Mr. Botts:

I think so.

The Court:

We will adjourn until 9:30 Monday.

(Thereupon an adjournment was taken to 9:30 A. M. Monday, May 15, 1939.)

Monday, May 15, 1939, 9:55 o'clock A. M.

(Hearing was resumed pursuant to adjournment: and discussion was had as to calling of handwriting experts.)

2134 MR. JAMES F. RILEY, JR., was recalled as
as witness on behalf of Respondents, and further
testified as follows:

Direct Examination.

By Mr. Underwood:

A. Mr. Riley, have you found the original bill of the
Palm Beach Service Station, covering gasoline for the
month of June, 1935?

A. Yes, sir.

Q. Is that the paper?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

If your Honor please, I haven't any objection to the bill
as a bill, as it was rendered by the Palm Beach Service
Station, but there are some writings on there that haven't
been referred to, and I object to those.

Mr. Underwood:

I will prove those.

(Said paper was marked Respondents' Exhibit 4-I for
identification.)

Q. Mr. Riley, towards the bottom of this exhibit I see
the words "Less Seminole Boat Company Chg." In whose
handwriting is that?

A. In my handwriting.

Q. When did you write that?

A. I wrote that when I checked the bill and found that
one of the tickets was a charge against J. S. Phipps.

Q. "O. K. J. F. R." who wrote that?

A. I wrote that.

Q. And towards the left of the bottom, check number 486, who wrote that?

A. I think Mr. Gorham wrote that.

Q. And below that, "Pd."—standing for paid, I presume, 7-22-35, who wrote that?

A. I believe that is Mr. Gorham's writing also.

Q. Was "July 1, 1935" on there, and "J. S. Phipps" at the top, on there, when you received the bill?

A. Yes, sir.

Q. And the ink entries of dates and amounts of gasoline, and dollar figures, were they on there when you got the bill?

A. Yes, sir.

Q. Who made the subtraction of 2.19 from 24.86?

A. I did.

Mr. Underwood:

I offer it in evidence.

Mr. Matteson:

No objection.

(The said paper previously marked for identification, was admitted in evidence and marked Respondents' Exhibit 4-I.)

Q. Mr. Riley, I show you a check; will you tell me whose check that is?

A. That is Mr. John E. Phipps' personal check for—

Q. What is the amount?

A. \$22.67.

Q. Do you know what that was paid for?

A. That was paid for that statement there that I just identified.

Q. Did that payment include the amount of \$2.19 charged to the Seminole Boat Company?

A. No, sir.

Mr. Underwood:

I offer this check.

Mr. Botts:

No objection.

(Said check was admitted in evidence and marked Respondents Exhibit 4-I-1.)

Q. I show you a Palm Beach Company triplicate voucher; will you tell me what that is for?

A. That is for the charge to the Seminole Boat Company, 2.19; in payment of the ticket for that amount dated June 24, 1935.

Q. That is the payment of the balance to the Palm Beach Service Station?

A. Yes, sir.

Q. Have you telegraphed for the duplicate and the paid portion of the original?

A. Yes, sir.

Q. They haven't come yet?

A. No, sir.

Mr. Underwood:

I offer the triplicate.

Mr. Matteson:

No objection.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-I-2.)

2141 MR. ROLAND A. SCHLAPPI, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. Roland A. Schlappi.

Q. And what is your business?

A. Why I guess engine repair work, mostly.

Q. Where do you live?

A. West Palm Beach; I live Kelsey City now,—my home.

Q. How long have you been familiar with gasoline motors?

A. Ever since about 1907.

Q. What sort of experience have you had with gasoline engines?

A. Pretty near all kinds; repairing, from bottom up.

Q. Have you taken down and reassembled them?

A. Yes, sir.

Q. And in what sort of vessels have you had to do with gasoline engines?

A. Why mostly smaller vessels, about 85 feet.

Q. Have you had experience with gasoline engines in other places than boats?

A. Aviation service during the war.

Q. What was your experience with gasoline engines there?

A. Well, I was mostly trouble shooter, going out, fixing up forced landings, stuff like that.

Q. How much of the time since 1907 have you been doing that sort of work?

A. Well, I have been doing it practically all the time.

Q. What was your first employment on the Seminole?

A. Why, I went as engineer, my first employment.

Q. Do you remember when it was?

A. It was in August, I think it was 1930.

Q. And who talked with you before you were hired, at that time?

A. Captain Bryant hired me.

Q. Did anybody else talk to you before you were hired?

A. Not on that trip.

Q. Now from 1930 on down to the time of the fire in 1935, did you work again on the Seminole from time to time?

A. Yes, sir.

Q. And do you remember about how many different times?

A. About three different times.

Q. And on the other occasions, who engaged your service?

A. Well, Mr. Riley would notify me to come down and get her.

Q. Did you ever talk with Mr. J. S. Phipps about your employment on the Seminole, just before you were employed?

A. No, sir.

Q. Did he ever hire you?

A. No, sir, never.

Q. Was your employment on the Seminole always as engineer?

A. Yes, sir.

Q. Now what kind of motors did she have?

A. Two Wintons, six cylinder, 120 horse.

Q. Are you familiar with those motors?

A. Yes, sir.

Q. How were they started?

A. By air.

Q. Tell us what was necessary to do, to start those motors?

A. Well, you had to prime them first. Through the pet cocks in the cylinder head.

Q. How many pet cocks were there?

A. Six on each motor.

Q. One in each cylinder?

A. One in each cylinder.

Q. Did you have to prime each pet cock?

A. Yes, sir.

Q. Can you identify that little thing?

A. That is one of them.

Q. Is that one of the pet cocks from the Seminole?

A. Yes.

Q. Removed from her since the fire?

A. It looks like it.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

No objection.

(The said pet cock was admitted in evidence and marked Respondents' Exhibit 4-J).

Mr. Botts:

Did the witness say this was one, or like the one? I didn't understand.

A. That's one of them.

Q. Where were the gasoline tanks situated with respect to the engine?

A. Well, they was in a bulkhead just forward of the motors.

Q. How many were there?

A. Four.

Q. Will you tell me whether or not there were any pans below the gasoline tanks?

A. They were set in trays.

Q. Do you know what the trays were made of?

A. 3/16 sheet metal; not sheet metal, iron.

Q. Do you know what the gasoline tanks themselves rested on?

A. Well, they was cushioned in the tanks on wooden stringers.

Q. You mean that wooden stringers were in the pans?

A. In the pans.

Q. And the gasoline tanks themselves rested on those?

A. Yes, sir.

Q. Now will you describe the method by which the gasoline tanks were filled with gasoline?

A. Well, there was a reservoir right across the top,—two inch reservoir—two inch brass pipe and the filler runs back about six feet and come up over the back of the engine room deck.

Q. Where did it come out on deck?

A. It come out just alongside of the hatchway you come out of the engineroom.

Q. Alongside of the engineroom hatch?

A. On the back of the engine house deck.

Q. About how far above the deck did that protrude?

A. About eighteen inches.

Q. What sort of a fitting was there where that pipe went through the deck?

A. Just a deck plate.

Q. Just what do you mean by a deck plate?

A. Well, a plate come down over the pipe and screwed down onto the deck.

Q. Do you know whether any gasoline could get through that opening if spilled in the course of filling?

A. No, sir; it was put there to protect water leaks and stuff, you know.

Q. Did you ever see anything drip through that opening?

A. Not a bit.

Q. Now where did that pipe run in the engineroom after it passed through the deck?

A. Well, it run forward to a manifold that went in the tank.

Q. A manifold ran athwartships across the bulkhead?

A. Right across the front of the tanks.

Q. How did it get from the manifold into the tanks?

A. Well, there was a globe valve, a big two inch globe valve,—I wouldn't say a globe valve, but a big valve, and you could fill any tank you wanted to. The way it went in, you filled your first tank quicker than you did the rest, it looked like.

Q. Each tank had a valve?

A. Yes.

Q. So that you could fill any combination of tanks at a time?

A. Yes; you did that so you could equalize it; put a filter on it,—a tank filter.

Q. What gauge or gauges did you have in the engineroom to indicate the quantity of gasoline in the tanks?

A. Had a gauge that went right up to the bulkhead,—a glass gauge.

Q. Where did that feed from?

A. It fed out of the feed line manifold.

Q. And how high was that as compared with the height of the tanks?

A. It was to the top of the tanks.

Q. How was that secured?

A. It was secured with brackets, that the glass gauge set in; and there was rods on each side of the gauge, to hold the gauge.

Q. And will you describe for us the fitting where the glass gauge was connected with the manifold?

A. Well, it was a kind of a T-type fitting, with a union on the top of it; a union nut, and your glass went in there and packed with wicking, and pulled down on it.

Q. Did that ever leak?

A. Never did.

Q. Was there any vent on the gasoline tanks?

A. Yes, vent—they was all connected at the four tanks and went out the side.

Q. Which side?

A. The port side.

Q. Where did the vents leave the tanks?

A. They left right out of the top of the tank and come down the port side and went on top of the gun'ale,—gunwale.

Q. Do you know how thick that pipe was?

A. It was half inch pipe.

Q. Did you ever have any trouble with that vent?

A. No, sir.

Q. Do you know whether the tanks were secured in that compartment??

A. Well, I don't know just how they was secured; I know I was out in pretty rough weather with them and never had any trouble, no leaks or anything on the trip.

Q. When was that?

A. That was when we carried her up to Ft. Lauderdale in August.

Q. Of what year, do you remember?

A. 1930.

Q. Have you ever been in that compartment where the tanks were?

A. It was pretty hard to get in there before—you would have to take that bulkhead apart, part of the bulkhead loose, to get in there.

Q. Did you ever get in there?

A. No, sir.

Q. Did you ever see, then, how the tanks were secured?

A. No, sir, I didn't.

Q. From your observation on the boat can you tell us whether or not they were secure?

A. Why—

Mr. Botts:

I object; he stated that he does not know, and necessarily any explanation he could give would be a conclusion. I object on that ground; and he has answered the question.

Mr. Matteson:

I think he has already answered the question as well as he is able to do it.

The Court:

He might have some information on that. If it is subject to the objection, why then I will consider it that way. I overrule the objection.

(The last question was read.)

A. Well, I don't know just how they was secured.

Q. Did you ever see any signs of their shifting?

A. No signs at all?

Q. What sort of weather have you been in, in that boat?

A. We went out outside from Miami to Ft. Lauderdale, a pretty heavy northeaster, and pretty near a trough sea, and she would go pretty far both ways; she was high on top of the water.

Q. Do you mean that she would roll?

A. Yes.

Q. Did you have any difficulty with your tanks on that occasion?

A. Not a bit.

Q. Did you ever see any signs of those gasoline tanks leaking?

A. No, sir.

Q. How could you investigate to see whether those tanks were leaking?

A. Why, you could,—there was a hole about that big around; you could look in around the fittings through the bulkhead.

Q. Indicating about six inches in diameter?

A. Yes.

Q. That was where? Where were those holes?

A. That each feed line come out of, from the tanks.

Q. What could you see when you looked in there?

A. Why, you could see the tray,—the bottom of your tray just in front.

Q. Did you ever see any drippings from those tanks in those trays?

A. No, sir, and I never smelled any either.

Q. What kind of batteries did she have?

A. She had Edisons.

Q. How many?

A. 100 cell battery.

Q. Where were they?

A. They was up on the starboard side.

Q. In the forward starboard corner of the engineroom?

A. Yes, sir, right up against the bulkhead, in two tiers.

Q. One above the other?

A. One above the other.

Q. How much current did they provide?

A. 110 volts.

Q. What was the condition of those batteries in 1935?

A. They was in good condition.

Q. Did you have any trouble with them that year?

A. Not a bit.

Q. Now there was some auxiliaries in addition to the two main motors. Will you tell me, what they were?

A. Well, she had a main generator motor.

Q. Where was that situated?

A. It was on the port side, just on the port of the port motor.

Q. Between the port motor and the port side of the boat?

A. Yes, sir.

Q. And how was that operated?

A. By gas.

Q. Where did the gasoline come from?

A. Come out of the main feed line,—the main reservoir feed line.

Q. The main tanks?

A. Yes, sir.

Q. Did you have a bilge pump?

A. Yes, sir.

Q. How many did you have?

A. Had one hand pump and one electric motor driven pump.

Q. Where was the motor driven pump?

A. It sits on a bench right in front, right up against the front bulkhead.

Q. There was a bench on the forward bulkhead?

A. Yes, sir.

Q. In the forward port corner of the engineroom, there was a little toilet?

A. Yes, sir.

Q. And that bench ran—

A. Ran towards the center of the boat, from there.

Q. How far over did the bench run?

A. Not quite to amidships.

Q. What was there amidships?

A. There was a desk.

Q. What was to the right of the desk.

A. The batteries.

Q. How close was the desk to the battery shelves?

A. About eighteen inches.

Q. That bilge pump motor rested on that shelf you have told us about?

A. It rested on that shelf.

Q. Did you have a sanitary pump or pumps?

A. Had sanitary—they fit right under the battery trays on the floor.

Q. How many were there?

A. Two.

Q. How were they driven?

A. Electric motor.

Q. Both electric motor?

A. Yes.

Q. Did you have a fresh water pump?

A. Yes, sir; they was both the same; one a sanitary and one a fresh water.

Q. One of these that you speak of under the batteries, was a sanitary, and the other was a fresh water pump?

A. Yes, sir.

Q. Where was the fresh water tanks?

A. They was in the forward part of the boat, under the deck.

Q. In the bilges?

A. Yes, sir.

Q. And did you have anything in the nature of an emergency lighting motor?

A. Had a small universal motor for emergency.

Q. Where was that situated?

A. It was in under this bench under the bilge pump.

Q. Was that electrically driven?

A. No, sir; that there, you have to have the generator,—gasoline.

Q. That was a gasoline driven motor?

A. Yes, sir.

Q. To provide electricity in emergency?

A. Yes, sir.

Q. Where did that get its gasoline supply?

A. Out of the main tank line.

Q. The line that ran from the main manifold, in some way?

A. Yes, sir.

Q. Now let's talk about this gasoline manifold. When the gasoline line came out of the tanks, how did it run?

A. The pipe run all the way across, and it come out with a globe valve,—or a valve, out of each tank; and then there was a T made up with unions.

Q. Was there a valve at each tank?

A. Yes, sir.

Q. How big was that gasoline manifold line?

A. It was quarter inch.

Q. What was it made of?

A. Brass pipe.

Q. After you got to the starboard end of that manifold line, what did the line do?

A. To the starboard end?

Q. Starboard end.

A. It has a draw-off valve there; it was connected on there and come back to the center of the boat, with two drain-valves.

Q. You mean that after the manifold line ran across the four tanks, it doubled back?

A. Yes, sir.

Q. And came back towards amidships again?

A. Yes, sir.

Q. And on the end of that line that doubled back, you say there were two valves?

A. Yes, sir.

Q. Now, how was that line supported, from the time when it doubled back?

A. It was supported through the desk legs, I imagine; bulkheaded right down to the floor in each side, and the pipe was supported through there.

Q. Those legs to the desk, did they go down to the floor, or back to the bulkhead?

A. They was regular solid boards, nailed right down.

Q. And what did the gasoline line that led to these draw-off valves, do, about those legs?

A. It was supported by them?

Q. Was the line held to the legs by brackets, or did it pass through the legs, or how was it fitted?

A. Put through the legs, put right through the legs.

Q. The line went through the legs?

A. Yes.

Q. How far from the port legs were the valves? How much pipe extended beyond the port leg until you came to the valve?

Q. [A.] Between six and eight inches; there wasn't any more than that. There was just enough so you could get anything under there to draw gas.

Mr. Underwood:

Do you have those exhibits,—the valves and pipes and things?

The Witness:

That drain pipe was enlarged.

Q. Which drain pipe?

A. The one that went through the desk.

Q. What size pipe was that?

A. Half-inch.

Q. The manifold itself, you say, was one-quarter inch?

A. Yes.

Q. And both were brass pipe?

A. Yes.

Q. Now the valves where the lines come through the bulkhead right from the tanks, did you ever have any trouble with those valves?

A. No.

Q. Did they leak?

A. One was just put on there for emergency, that extra one.

Q. I am not talking at the moment about drain valves. I am talking about the valves right at each tank where the manifolds come through the bulkhead; those valves never leaked?

A. No.

Q. Now we will talk about the two draw-off valves. Can you remember what kinds of valves those were?

A. I am not sure what kind they were; they were either Crane or Lunkenheim; they both look so much alike, and I worked on so many boats.

Q. Do you remember what size they were?

A. Half-inch valves; one of them was fixed so you could put a three-quarter connection on there if you wanted to.

Q. Rollie, I show you these two valves which are marked Libelants' Exhibit 11. Do you recognize these?

A. Yes, sir.

Q. Are these the drain valves from the Seminole?

A. Yes.

Q. Did you ever have any trouble with those?

A. No, sir.

Q. Did they ever leak?

A. No, sir.

Q. About how far was the right-hand end of this two-valve assembly from the desk leg?

A. That wasn't far—not very far, because you could just get a can under there, one of these regular filler cans.

Q. Could you tell us about how many inches it was,, or if you can't, just tell us so.

A. That whole business stuck out there between eight and ten inches; that was a long time ago.

Q. Now, where did the feed lines for the motors leave the manifold?

A. They left right under the edge of this bench that came across there for the port hole.

Q. Where did the starboard line leave the manifold?

A. It come out on the right side of the desk.

Q. Which way did these lines lead?

A. Down under the floor and up through the carburetor.

Q. Now was there any trap in these lines?

A. The trap was right next to the manifold.

Q. Between the manifold and the floor?

A. Yes; it was pretty close up to the manifold itself.

Q. Was there any other fitting between the trap and where the line led through the valve?

A. The valves to shut off the gas on the motor.

Q. How many sets of valves?

A. One to each motor.

Q. One on each feed line?

A. Yes.

Q. What was in the bottom of that trap that was in the feed line to the starboard motor?

A. It was a plug.

Q. Do you remember what kind of a plug?

A. No, I don't; some of them were hard and some of them were flat and solid.

Q. What was in the bottom of the trap that was in the feed line of the port motor?

A. A union connection?

Q. What kind of a connection?

A. Well, it was copper tubing, a copper tubing feed line.

Q. Where did that run?

A. It runs to the small motor there, that emergency motor.

Q. That is the one that was beneath the bench?

A. Yes.

Q. There wasn't any plug in that port trap?

A. No, sir.

Q. Now where did the feed line to the generator motor leave the main feedline?

A. I left right on the port tank, right on the end of the port tank.

Q. You mean at the port end of the manifold that runs across the front of all four tanks?

A. Yes.

Q. How did they run?

A. It run right direct under the floor and came up right at the front carburetor, the port carburetor.

Q. What was that line made of?

A. Copper tubing.

Q. A line of copper tubing?

A. Yes, sir.

Q. Did you have backfire arrestors there?

A. Yes; they was in the mouth of the carburetor.

Q. On each motor?

A. On the two main motors.

Q. Was any part of these motors and feedlines painted?

A. The manifolds was all painted black.

Q. How about the feedlines from the manifold?

A. Down to the floor they was all painted.

Q. Were they painted where they come up through the floor to the carburetors?

A. Yes.

Q. Are they painted below the floor?

A. No.

Q. How about the motors themselves, were they painted?

A. Yes.

Q. What color was the paint on the motors?

A. A light grey.

Q. What color was the paint on the feedlines?

A. Black.

Q. You were on the Seminole on a cruise in the spring of 1935, were you not?

A. Yes, sir.

Q. During that time what examination did you make to see whether there were any leaks in all of this gasoline equipment?

Mr. Matteson:

I object to that. He has not said he made any examinations. Let the witness testify.

Mr. Underwood:

I will withdraw that question and ask another one.

(By Mr. Underwood):

Q. Tell us first Rollie, whether you ever made any examinations during that last cruise, to the leaving of the boat at Pilkington's,—whether you made any examinations of these gasoline tanks and feedlines?

Mr. Matteson:

I object to that as leading.

The Court:

I don't think it is leading. The objection is overruled.

A. I cleaned them all up and painted them right down here at Royal Palm Docks, and repaired them.

Q. What else did you do, if anything, about these lines during the time you were on her that year?

A. Well, I didn't have any trouble with them; they were packed good and tight; oiled the valves is about all.

Q. How often did you look at these lines?

A. Quite often.

Q. Well, how frequently does that mean, Rollie?

A. Well, every time we went to draw gas you would look at them pretty much.

Q. How about when you were not drawing gas?

A. Well, if you don't smell no gas or anything, I don't think it is necessary to examine them every day.

Q. When you looked at those feedlines and manifolds and so forth, tell us what you found.

A. They were in good shape.

Q. Did you find any leaks in that feedline or manifold?

A. Not in the feedline.

Q. Did you find any leak anywhere there?

A. I had a leak in the union on the filler pipe one time.

Q. When was that?

A. That was when we were gasing up to go to the keys.

Q. What year was that?

A. 1935.

Q. What did you do about that?

A. Well, I got a fellow that was filling on a gas boat—I got his wrench—he came over there with me and we tightened it; it took the two of us.

Q. When was that?

A. That was when we were filling to go to the Keys.

Q. That was at the Royal Palm Dock?

A. Yes.

Q. The time that you spoke of going to the Keys, was that in the spring of 1935?

A. Yes.

Q. Tell us how near the place where the filler pipe came through the deck that that leak occurred?

A. Just about half way between each of the—between it and the tanks.

Q. And where was the leak?

A. It was right in the ground-seat union, where the unions connected together.

Q. There was a union in that line between the place where the filling came through the deck and the filling manifold, is that right?

A. Yes.

Q. And that leak was there?

A. Yes.

Q. From that time on did you have any trouble with that union?

A. No, sir. I stopped them from filling, and he came along with the wrench, and we fixed it up.

Q. Did you fill more after that?

A. We finished filling after that.

Q. Now was there any leak at that union after you fixed it and while you were completing the filling?

A. No, sir.

Q. How close to the deck head or the ceiling of the engineroom was that filling line at that place?

A. Now, I wouldn't know—I wouldn't know just exactly how close to say.

Q. Just approximately.

A. I would figure it was about ten inches. I didn't pay too much attention to it.

Q. Was or was not the filling line at that place above the level of the tops of the gasoline tanks?

A. Yes,—no, it wasn't, because the filler lines went in—

Q. Was or was not that place above the level of the place where the filling lines went into the tanks?

A. I imagine it was; it run kind of on a slant, like that.

Q. Which way was the slant?

A. Towards the tank. You see, the tanks are about that much higher, much higher from the bottom of the tank than the reservoir.

Mr. Botts:

Indicating about four inches.

Mr. Underwood:

That is right.

Q. About how far from the tops of the tanks was it where the filling lines went in to the tanks?

A. From the tops of the tanks?

Q. Yes.

A. About that far (indicating).

Q. Is that the distance you just mentioned?

A. Yes.

Q. Now apart from the leak that you mentioned in the filling union, did you ever find any other leak?

A. No, sir.

Q. Did you know the difference, Rollie, between a seep, weep or leak?

A. Well, some people call them seeping and some weeping; just where you have a sign of a leak—

Q. Did you ever see anything like that in the engine-room of the Seminole?

A. No.

Q. Did you ever smell any gasoline vapor in the Seminole?

A. No, sir; only when we were drawing or priming the motors.

Q. Now where was the main switchboard located?

A. On the back bulkhead between the two motors.

Q. How did the wires run from the battery to the main switchboard?

A. Through a regular conduit.

Q. Now where was the first switch that had to be closed in order to put electricity from the batteries on the switchboard?

A. The first switch to be pulled was on the starboard side of the bottom of the board.

Q. You say "starboard" side, Rollie, but I notice you used your left hand.

A. Well, the starboard side of the boat.

Q. That would be your left?

A. Facing the switchboard would be on the left.

Q. Was it high or low, on the switchboard?

A. It was on the lower corner.

Q. When you closed that switch how far did that put electricity on the board?

A. It just puts it on the board.

Q. How much of the board did it put it put it on?

A. It put it up to your charge and discharge switch.

The Court:

You will have to speak a little louder. I cannot hear you.

Q. Where was that switch?

A. It was right in the center of the board.

Q. When you closed or opened that switch, Rollie, show us which way you moved your hand; I mean was it vertical or horizontal?

A. It was horizontal, the discharge and charge switch was.

Q. Now the first switch that you spoke about down in the lower starboard corner, was that horizontal or vertical?

A. It was vertical; you threw it up and down.

Q. Going back to the charging and discharging switch, which way was the charging position?

A. The charging position you threw it to the right,

Mr. Matteson:

Let the record show considerable thought and delay in answering.

Mr. Underwood:

I think the record will probably show that as to this witness about a great many witnesses. Is there anything wrong about that; is there any criticism of the witness, if so, please state it.

The Court:

Suppose we proceed. I think it is rather difficult to read into the record anything in regard to that particular answer; it is difficult to characterize it; it is a different situation, but I think we had better proceed without any comments at this time.

(By Mr. Underwood):

Q. Rollie, what do you call this switch that was at the lower starboard corner, the first switch that you use to put electricity on the board?

A. The main switch.

Q. After you close the main switch, then which switch do you have to close to get electricity on your field switches for lighting?

A. You have to throw it on the discharge side.

Q. And that you indicated would be thrown to the left as you face the board.

A. That is a long time to remember.

Q. Tell us your best recollection.

A. Well, as near as I recollect we threw it to the left.

The Court:

If you want to read in the record there, Mr. Matteson, that it was with some hesitation that he answered some question, you can do so.

Mr. Matteson:

I do not care to encumber the record because the witness is before you and makes his own impression, so it is not necessary to encumber the record.

The Court:
All right.

(By Mr. Underwood):

Q. Where did the electricity go when you closed that switch on the discharge side?

A. It went up to your field switches.

Q. By "field switches", tell us what you mean.

A. Well, those four different compartments and stuff on the boat.

Q. Lighting switches?

A. Yes, sir.

Q. What was the use of this charge and discharge switch?

A. Well, when we were using the generator you would have to throw it to the opposite side.

Q. To the opposite side?

A. Yes.

Q. Which way would the current flow when you closed it on the charge side?

A. It would flow into the battery room.

Q. What type of switches were those on the board?

A. Some people call them "throw-switches" and some people call them "knife switches".

Q. Were they covered in anyway?

A. No, sir.

Q. How long have you been on boats that were operated by gasoline motors?

A. How long have I been on them?

Q. Yes.

A. Well, I worked on a lot of them, but I never made an actual business of working on them, working on them as engineer.

Q. What do you mean by "not working on them as an engineer"?

A. Well, an engineer generally takes a steady job and works on a boat. My business generally—by business was mostly repairing and stuff like that.

Q. Have you seen switches on other boats during the course of that business?

A. Yes.

Q. Can you tell us what type of switch was in general use in 1935?

A. Mostly knife switches on the switchboard?

Q. Enclosed in any way?

A. No, sir.

Q. Have you used the switches on the Seminole?

A. Yes.

Q. And this last time you were aboard of her, in the spring of 1935, what was your experience with these switches in using them?

A. Well, they worked all right.

Q. Did you see any sparks?

A. Well, you broke—when you pull a switch you make very much of an arc in changing from generator to discharge side, you know.

Q. You are referring to some particular switch?

A. That is the discharge and charge switch.

Q. How about the main switch?

A. Well, after you break your discharge and charge switch, why you would pull your main switch out without making an arc.

Q. How about the field switches?

A. They would make a little arc when you break them or throw them in.

Q. How about the closing of these switches, do they make any arc then?

A. Well, nothing like it does when you are pulling them away.

Q. Will you describe what happened when you closed these switches?

A. If you closed a switch quick you will hardly notice any arc at all.

Q. Did you ever see any sparks in closing these switches?

A. Not enough to speak of.

Q. Now, what ventilation was there in the engine-room?

A. There was two big cowl ventilators that went up through the deck, right off the front main motor.

Q. What windows were there?

A. There is a window in the engineer's bedroom, and on the side, on the port side.

Q. What was there on the starboard side?

A. There is a hallway that went through the quarters; there is a door that opens into the engineroom; it is more of a door than a window, because it opened out into the engineroom.

Q. When you left her the last time at Pilkington's how were the cowl ventilators left?

A. They were left open.

Q. How were the windows left?

A. The one on the outside of the boat was left open, the screen door—the screen was all that was closed on it.

Q. How did that window open; in what direction?

A. It opened right up to the top of the boat; you lifted it right straight up.

Q. Was it opened on hinges?

A. Yes, sir.

Q. How was the window from the alleyway to the engineroom left?

A. It just swung out against the side, against the side of the shelf.

Q. When you left the boat at Pilkington's the last time how was that window left?

A. Well, that window, as well as I remember, was open.

Q. Do you remember the windows in the alleyway, from the alleyway to the outside of the boat?

A. No, sir, I don't.

Q. Do you know anything about those windows?

A. I don't know whether they were open or not.

Q. When you left her at Pilkington's, how did you leave the engineroom hatch?

A. Let it down and locked it.

Q. How about the skylight?

A. The skylight was always open on that boat.

Q. When you left it at Pilkington's the last time, how was it left?

A. It was open; there was a screen in the skylight to keep anything from going down in there.

Q. Now one witness in this case has mentioned some gooseneck vents that were on deck. Will you tell us how many of those you knew about?

A. I know there was some along each side of the boat; I couldn't say how many there was; they run about ten feet apart, it looked like; I never counted them.

Q. Do you know where they led?

A. No, I don't.

Q. Have you been in the bilges of the Seminole?

A. Yes, sir.

Q. How could you get into the bilges from the forward part of the boat?

A. There was a big hatch right in the hallway; you pulled the rug back and lifted it up on the side, and walked right down the steps.

Q. How much room was there in the bilges in the forward part of the boat?

A. I would say about four feet.

Q. What was kept in the bilges there?

A. Water tanks.

Q. Anything else?

A. Water tanks and the anchor chain.

Q. As you went aft from that place, did you come to any bulkhead?

A. You come to a bulkhead just behind the water tanks.

Q. Where was that with reference to the gasoline tanks?

A. It was about between eight and ten feet forward.

Q. The bulkhead was eight or ten feet forward of the gasoline tanks?

A. Yes, sir.

Q. How far down did that bulkhead go?

A. Right down to the bilges.

Q. Was there any way you could go through that bulkhead into the bilges?

A. No, sir.

Q. And could you get in the bilges abaft that bulkhead?

A. There is a manhole ~~plate~~ right under the desk.

Q. In what?

A. In the bulkhead beyond the tanks.

Q. What was the type of that?

A. Square.

Q. When you went through there where could you go?

A. Go up to the forward bulkhead, up to that bulkhead, and your steering device and all was set in there.

Q. Now the engineroom floor, what was that made of?

A. Wood.

Q. What did it rest on?

A. It rested on girders and wood springers, too.

Q. How could you get in the bilge in the engineroom?

A. You could lift it up—take the whole floor right up in the engineroom,

Q. How big in sections was the floor?

A. Well between the engines was just one section wide and two sections long; two hatches.

Q. How about the balance of the engineroom?

A. In front you could lift it up—right in front of the engine there is a hatch right in front—

Q. How much space was there between the wooden floor of the engineroom and the bottom of the bilge, amidships?

A. I would say about eighteen inches; it was so flat that it didn't make much difference.

Q. Now on the starboard side of the engineroom what was there, if anything, underneath the floor of the alleyway?

A. There was no floor under that; it was all pipes for your water-manifold and the different manifolds and stuff.

Q. Was there another wall or bulkhead between the space under the alleyway and the engineroom?

A. No.

Q. That was open?

A. Yes.

Q. There was a bulkhead across the after-end of the engineroom, was there not?

A. Yes.

Q. How far down did that go?

A. Went right down to the girders, and they came across.

Q. Could you pass through that bulkhead?

A. No, sir.

Q. How wide was the bulkhead; was it as wide as the boat or did it stop short?

A. It stopped right in the alleyway.

Q. If you got into the space under the alleyway how far aft could you go before you got to a bulkhead that stopped you?

A. Well, that bulkhead under the alleyway was across, but it wasn't all the way up.

Q. So that the after engineroom bulkhead went all the way across the engineroom?

A. Yes.

Q. And continued across to the starboard side of the boat beneath the passageway?

A. Yes.

Q. How could you get in the bilges abaft that engine-room bulkhead?

A. You had to go up along this alleyway and into the first stateroom, and behind that bulkhead you lifted up a hatch on either side.

Q. Where did that take you?

A. Took you right into the bilge where your air tanks and stuff was.

Q. Now when you get down in the bilges there how far aft could you go?

A. You could go back to right under the galley or kitchen.

Q. What stopped you there?

A. A kind of bulkhead.

Q. Could you get through that bulkhead?

A. Yes.

Q. Pardon me.

A. Yes.

Q. You could go through that bulkhead?

A. Yes.

Q. Tell us how you could get through that bulkhead.

A. You got through in the center between the shafts.

Q. What was there?

A. Stuffing boxes where your driving shafts went out.

Q. Was there any bulkhead after that one?

A. No, sir; I am not sure of that.

Q. Do you remember any now?

A. I know you had to go down there to get to your stuffing-boxes to tighten them up; I am pretty sure there wasn't no bulkhead in there.

Q. Can you tell us how many of these bulkheads, if any, were watertight?

A. There wasn't any of them watertight.

Q. In the spring of 1935 what kind of work were you doing before you were employed on the Seminole?

A. I was fishing.

Q. Who talked to you about working on the Seminole that spring?

A. Mr. Riley called me up and asked me if I wanted to go down to meet Captain Baker and take the Seminole down to Miami.

Q. Who was it that hired you?

A. Mr. Riley.

Q. Did you talk to Mr. Phipps about that?

A. No, sir.

Q. Did you discuss anything about how much you were to be paid?

A. No, sir—yes; wait a minute. I think I asked him for \$8.00 a day.

Q. Who was it that you asked?

A. Mr. Riley.

Q. Did you agree with him on a figure?

A. Yes.

Q. Did you ever have any discussion with Mr. Phipps about the rate?

A. I never talked very much to Mr. Phipps at all.

Q. Now after you were hired for the Seminole, where did you join the boat?

A. At Fort Lauderdale.

Q. Who was Captain of her?

A. Captain Baker.

Q. Where did you go with the boat from there?

A. We brought it to the Royal Palm Dock.

Q. How long did you stay on her at that time?

A. Eighteen days—let's see—I was there overhauling her 18 days.

Q. What were you doing on during that time?

A. Well, I tore out a generator motor and repaired it, cleaned and oiled, and took oil and stuff out of the big motors, and put new gaskets on them all around.

Q. Do you remember anything else that you did at that time?

A. Scraped and painted.

Q. Scraped and painted what?

A. Her motors.

Q. Do you remember anything else that you did at that time?

A. Well, I took her out on a trial trip a couple of times.

Q. How much of the gasoline feedlines did you see during that period?

A. I saw them all during that period.

Q. Did you observe any leaks during that time?

A. No, sir.

Q. Any weeping or seeping?

A. No, sir.

Q. Do you remember how you got paid for that time?

A. I got paid for a whole bunch of work at one time that spring.

Q. I show you a paper which is a part of Exhibit 3-U, voucher Number 8032. Can you tell me, Rollie, whether that is the top half of the check that you got for that work?

A. Yes.

Q. Now you have spoken of 18 days. I show you an item on there "Seminole Boat Company, 18 days at \$1.50".

A. That was when I was eating at the restaurant.

Q. That \$1.50 covers your food, is that right?

A. Yes, sir.

Q. It says at the top, "Seminole Boat Company, 22 days". Can you tell me what those 22 days were?

A. That was the same time I was working on her.

Q. Did you work on her 22 days?

A. I couldn't say I worked 22 days. I came down and took her to the Boatyard down there on trip, and that "18 days" was when I was eating at the restaurant there.

Q. Where was the boat at that time?

A. At the Royal Palm Dock. I came down one day and took it out to the Coconut Boat Yard; Coconut Grove Boatyard, and then the next two or three days I took her back; I guess that is where the 22 days comes in.

Q. I notice on here "bus-fare, five trips at \$1.20".

A. Yes.

Q. Can you tell me what that covers?

A. That is when I was coming back and forth to haul her out.

Q. While we are talking about this, I notice a charge on there, "Mr. J. S. Phipps Boats, 31 days at \$5.00". Do you remember what that work covered?

A. That was on the Iolanthe.

Q. Did you work on the Iolanthe during that spring?

A. Yes, sir.

Q. I see a charge here "Mrs. F. E. Guest Boats, 7 days at \$5.00". Can you tell me what that is?

A. I went to Bimini; that was on the Iolanthe, too.

Q. And the other charge on there is "Mr. J. S. Phipps Boats, one day at \$8.00". Do you know what that is?

A. I don't quite remember.

Q. Who kept your time?

A. Why, I generally kept it, and then I went to the office and reported it.

Q. To whom?

A. To Mr. Riley.

Q. Who worked out how much you were to get?

A. Well, we would come to an agreement—we came to an agreement on that one when we went to the Keys that time.

Q. After you reported your time to him what happened?

A. Why, he just made it up that way and gave me a slip of paper and I carried it to Mr. Anderson and he would fix it up and give me a check.

Q. Now in that last spring when you were on the Seminole, in 1935, did Mr. Phipps give you any orders or instructions?

A. No, sir; I always took my orders off of the Captain.

Q. Did you see Mr. Phipps in the engineroom of the Seminole that spring?

A. He was in the engineroom one time while we were laying at the Royal Palm Dock, about a week or two before we went to the Keys.

Q. How long was he in the engineroom?

A. About ten minutes.

Q. And what did he do there?

A. He just came in and looked around and said everything looked good and walked out.

Q. Was there any discussion between you and him as to anything about the engineroom?

A. Not a bit.

Q. Did you know Abel?

A. Yes, sir.

Q. Do you know where he was when you were on that cruise to the Keys in the spring of 1935?

A. He was with us on the Clip.

Q. Was he in charge of some boat?

A. He was in charge of the day boat; the name of the boat was The Clip.

Q. Did he have anything to do with the Seminole on that trip?

A. No, sir.

Q. When you took the Seminole from Fort Lauderdale to Miami with Captain Baker did Abel have any part in that?

A. No.

Q. And when the Seminole was at the Royal Palm Dock that spring did you see Abel in Miami at that time at all?

A. Yes; he came down with the boat.

Q. With what boat?

A. With the Clip, and waited around there four or five days for orders, and then he took it and went back to Palm Beach.

Q. Was he on the Seminole to do any work in the way of employment while you were on her at all that spring?

A. No, sir.

Q. Had he been on the Seminole previous to that time, do you know?

A. For work?

Q. At all?

A. He was on the Seminole when we had it up on the dock there—when we had it at the dock there.

Q. Where?

A. Up at Palm Beach.

Q. Do you know what year that was?

A. It was the year before we went to the Keys; I guess it was in 1924; we were doing some work on the bilges there; I guess it was in 1934.

Q. Did he do some work on the Seminole?

A. No, sir, not outside of getting material or something like that.

Q. I am speaking of Abel; did he do any work on the Seminole?

A. No, sir.

Q. Not while you were there?

A. No, sir, not while I was there.

Q. What were you doing on the Seminole at that time?

A. Fixing up the water pipes and stuff around different places; putting in new bolts.

Q. Had Abel, as far as you know, had any instructions in the method of using the switchboard on the Seminole?

A. Yes, sir.

Q. Tell us what you know about that.

A. I showed him where to throw the switches to get a circuit.

Q. When was that?

A. When we had her up at Palm Beach there.

Q. What was your purpose in that?

A. Well, he just wanted to know and I showed him.

Q. Was he doing any work on the boat at that time?

A. No, sir; he was a kind of fellow who would take your orders and get your stuff if you wanted anything, material, or anything like that.

Q. Getting back to this cruise in the spring of 1935, where did the party leave?

A. The party left at Lower Matecumbe.

Q. Where did you go from there?

A. Came up to Miami. You mean when they got off the boat?

Q. After the party left the boat at Maticumbe where did the Seminole go?

A. We came up here to the Royal Palm Dock that night.

Q. What did the crew do there?

A. Some of us went to Lauderdale.

Q. Some of the crew left at Miami?

A. Yes.

Q. How many of you went to Lauderdale?

A. The cock, Elliott Bryant and myself and Captain Baker.

Q. When did you get to Fort Lauderdale; that is, how long did you stay in Miami?

A. We were held up on account of fog a little while; it must have been nine o'clock before it cleared up.

Q. You mean in the morning or evening?

A. In the morning.

Q. Of the next day?

A. Yes.

Q. Then you went to Lauderdale?

A. Yes, sir.

Q. About what time did you get to Fort Lauderdale?

A. About 3:30.

Q. Where did you have your lunch that day?

A. We had lunch at the mouth of the river, just before starting up to Fort Lauderdale.

Q. Where was the boat when you had lunch?

A. We just run her up in a little slip there, just before turning the river; just run her up in there and left the motors running.

Q. Did you get any instructions about what to do with the boat before leaving her that day?

A. No, sir; I did it before, though.

Q. What was the situation as to gasoline in the tanks as you were going up the river that day?

A. There was very little gasoline in them.

Q. How about the motors; how did the motors behave on the way up to Pilkington's that time?

A. They behaved all right outside of one of them got weak on gas.

Q. When you got to Pilkington's where did you put the boat?

A. Left it out there on the outside of the dock, on the south side of the slip.

Q. When you got there how much gasoline showed in the gauge?

A. Didn't any show in the gauge.

Q. How close to the manifold was the top of that tee-fitting out of which the glass part of the gauge led?

A. Well, it would not be over one inch above the main manifold.

Q. Could you see any gasoline in that gauge at that time?

A. No, sir, you couldn't see hardly any when we stopped down there to eat.

Q. When you left her at Pilkington's could you see any?

A. No, sir.

Q. When you stopped the motors that day, can you tell us how you did it?

A. Yes, sir. We shut off the feed-line valves and let them die out.

Q. Which valves do you refer to as shutting off?

A. The feedline from the trap.

Q. You mean the valves below the traps?

A. Yes, sir.

Q. What was the effect of that?

A. Well, that is the way—we made a practice of shutting them off—she had a deep under-water exhaust, and if you cut your switches you are liable to run her—you are liable to let her roll back and fill your motors full of water.

Q. Tell us what else you did in the way of getting the engineroom ready to leave?

A. Well, I shut off all of the overboard connections, valves and stuff.

Q. What else?

A. We flushed all of the toilets and pulled all of the switches.

Q. What else?

A. Painted the copper or brass fixtures with lacquer, to keep them from corroding.

Q. What else did you do, Rollie?

A. I did most of the painting and covering that stuff going up the straight canal; I did that while I was traveling.

Q. What else did you do after you got to Pilkington's?

A. Wiped the motors off and put oil in her plugs, and roiled them over a few times.

Q. When had the drain-valves, these two that are before you there, last been used prior to the time that you got to Pilkington's that day?

A. I used them here at Royal Palm Dock that day, while we were over at the Royal Palm Dock.

Q. For what purpose?

A. Took some gas out and put it in Captain Baker's guide boat. He said that his boat was full when he carried it to the dock here, and he wanted it full, and we wanted to get "shed" of all of that gas that was in the tank, as much as I could, because it wouldn't work good when it gets old that way.

Q. When you finished that what did you do with those valves?

A. Shut them off good.

Q. From that time on did you observe any leak or seep or weep at these valves?

A. No, I didn't.

Q. Will you tell us whether or not you looked at these valves again that day?

A. I always took and run my hands around the top of it and under the bottom to see that they were shut off.

Q. What else did you do there?

A. Right there at the dock?

Q. Yes, do you mean Pilkington's or the Royal Palm Dock?

A. Royal Palm Dock.

Q. What did you find?

A. That they were tight.

Q. When you left the boat at Pilkington's how did you leave these valves?

A. Shut off, just the same as they were.

Q. How about the valves at the tanks themselves, the four tank valves?

A. Everything was shut off.

Q. Who shut them off?

A. I did.

Q. When did you do that?

A. After the motors had stopped.

Q. How tight did you shut them?

A. I shut them just good and tight.

Q. Were you in the bilges at all that day?

A. I was all through the bilges cutting off my over-board connections that day.

Q. Tell us where you were in the bilges; you have told us about the bulkheads and what was in the bilges in the various places,—how many of these different compartments were you in?

A. I was in all of them.

Q. Did you smell any gasoline in any of these bilges?

A. No, sir. And to cut off the deep water suction cock for the circulation of your motors you had to lift the floor board to get down to where it comes through the hull.

Q. Where was that, Rollie?

A. There was one on each side, right outside the motors.

Q. That is in the engineroom space, one on the outside of each motor?

A. Yes.

Q. I was asking you about bilges; I would like to be clear just whether or not you were near the bilges on that last day.

A. Yes, sir, I was.

Q. Did you see any gasoline in any of those bilges?

A. No, sir.

Q. Smell any?

A. No, sir.

Q. Did you see any leaks or weepage or seepage any place that day?

A. No, sir.

Q. Now did you have a gasoline can in that engineroom?

A. Yes—

Q. Like that?

A. Yes, sir.

Mr. Matteson:

What exhibit is that?

Q. Exhibit 13. Did you have one like that in there?

A. Yes, sir.

Q. Does that look like the one they had?

A. It looks just like it.

Q. How did you leave that gasoline can?

A. Setting right on the end of the bench there.

Q. Was there anything in it?

A. No, sir.

Q. Which bench do you refer to?

A. The one on the forward bulkhead.

Q. Where the little motor was?

A. Yes, sir.

Q. How about oil and grease, or rags, things of that sort? Tell me anything you have in mind about that, on that day.

A. That was all throwed overboard, all but one can of oil, and I set it out on the dock, set it out through the window.

Q. Did you have any cans with oil in them, in the engine room?

A. Only new oil, sealed cans.

Q. About how many cans of that were there?

A. Well, I wouldn't be sure; maybe six or seven.

Q. How big were they?

A. Five gallon cans.

Q. What kind of oil was it? I don't mean, the brand; was it cylinder oil?

A. Cylinder oil.

Q. Did you leave any in the engine room, any oil cans that had been opened?

A. No, sir.

Q. Did you leave any rags in the engineroom?

A. No, sir. There was about a half a bale of new waste, I took and set it right up on top of the toilet.

Q. Had any part of that been used?

A. No, sir, never been out of the bale.

Q. Now in what condition did you have the batteries that day?

A. They was all full, in good shape.

Q. Had you experienced any shorts or grounds in the Seminole that year?

A. No, sir; I didn't have a ground in it on the trip.

Q. How about ashore?

A. No, sir, I didn't have any.

Q. Had you ever had any shorts on the Seminole?

A. Did on a spot light, one year.

Q. What year was that?

A. I fixed it when they had it at Palm Beach.

Q. Was that 1935, or some other year?

A. '34.

Q. What do you mean by spot light?

A. Upon the deck of the boat.

Q. A search light?

A. Search light.

Q. Up around the pilot house?

A. Yes, sir.

Q. After you fixed it, did you have any trouble with it?

A. No, sir.

Q. About what time did you leave the Seminole that last day?

A. We left pretty close to six o'clock.

Q. And did you leave it alone, or with somebody?

A. Why, if I remember right, Captain Baker and the cook was waiting on his car to come when we left.

Q. Whom do you mean by, we?

A. Bryant and myself.

Q. Elliott Bryant?

A. Yes, sir.

Q. And how did you get back to Palm Beach?

A. Mrs. Pilkington carried us to Ft. Lauderdale; we caught the bus from there.

Q. And you left Pilkington's yard about what time?

A. I imagine it was about six o'clock.

Q. Did you have anything to do with the Seminole's keys that day?

A. No, sir, only to unlock the lock to the engineroom.

Q. Did you handle the keys that day?

A. I don't—I think I did; the lock was locked onto the pipe guard; I think I handled the keys to unlock the lock.

Q. What kind of a lock was it?

A. One of those kind of bicycle padlocks, those long shank.

Q. A long shank on it, you say?

A. Yes, sir.

Q. What was the padlock used for?

A. It locked down on the hatch, engine hatch.

Q. After you used the keys to unlock that lock, what did you do with the keys?

A. Well, I don't know whether Elliott Bryant took them, or the cook, to lock up the silver and stuff.

Q. How many keys did you have, do you remember?

A. I believe there was four keys on the ring.

Q. You say, on the ring; what kind of a thing was it that held the keys together?

A. It was a piece of hard string, used for a ring.

Q. Was there anything else on that string besides the keys themselves?

A. No, sir.

Q. Do you remember a tag of any sort?

A. Well, there was no tag on it then.

Q. Are you sure who you handed the keys to?

A. No, sir, I am not.

Q. Did you take off any keys from that ring before you delivered the keys up?

A. No, sir.

Q. Now from the time you left the boat that day, were you on her again before the fire?

A. No, sir.

Q. What was the first you knew about the fire?

A. I was called up Tuesday evening about four o'clock, and they asked me to come down to show them where the holes was in the boat.

Q. Who asked you that?

A. Mr. Riley; so they could pump her out.

Q. Did you go down there?

A. Yes, sir.

Q. About what time did you get there?

A. I went down there between six and six-thirty.

Q. That was the day after the fire?

A. The day after the fire.

Q. And what did you do that evening?

A. Why I showed Mr. Holm where the openings was in the boat, and where to plug them up, so as to stop the water from coming in.

Q. Did you go aboard the boat?

A. Yes, sir.

Q. What was her situation when you got there?

A. She was sunk.

Q. Was there any pumping done that night?

A. They pumped it out that night.

Q. About what time did you begin pumping, do you remember?

A. Well, the tide was still up, when we got the holes plugged; and we waited there quite some time for it to get low; and I would say, eight or nine o'clock.

Q. Do you remember what time the pumping stopped that night?

A. Between one and two, I guess.

Q. That would be Wednesday morning?

A. Yes, sir.

Q. What was the situation of the boat at that time?

A. She was afloat.

Q. Was there any water in her, still?

A. Yes, sir, there was some, on account of coal and stuff laying around, you couldn't pump it much without cleaning it out.

Q. On account of what lying around, Rollie?

A. Ashes and wreckage and stuff.

Q. Do you know or remember whether the water was at that time down as low as the floor, the wooden beams in the engineroom floor?

A. It was just about with them.

Q. Do you remember how thick those beams were?

A. No, sir.

Q. Could you give us any idea of how thick they were?

A. Do you mean the girders,—the steel girders, or the wood?

Q. The wood.

A. No, I haven't.

Q. Did you see any gasoline in the Seminole that night?

A. No, sir.

Q. Did you see any oil, or smell any gasoline or oil, anything of that sort?

A. Well, the smell of oil all over the place.

Q. By all over the place, what place do you mean?

A. All over the boatyard itself, all over the basin.

Q. When pumping stopped that night, was anything still burning?

A. There was some of those posts burning on top.

Q. You mean, the posts that had been part of the shed?

A. Yes, sir.

Q. Anything else?

A. No, sir.

Q. Did you see any gasoline leaking anywhere that night?

A. Yes, sir, I saw plenty of gasoline leaking, but it was on the motor we was pumping out with.

Q. Where was that?

A. It was on a barge, a little barge setting alongside of the Seminole.

Q. Who provided that motor, do you know?

A. I think the man's name was West.

Q. What did you see there?

A. There was a young fellow running that motor for him.

Q. What did you see?

A. Well, there was a pet cock on the tank, and the motor was on very poor foundation, and it shook the pet cock loose on the tank, and there was gasoline running out of that.

Q. How long did that last?

A. It didn't last long, because I saw it.

Q. What was done about the pet cock?

A. Closed it off.

Q. Who did that?

A. We did—he did. I told him—that young fellow; I never did know his name.

Q. You refer to the young fellow who was running the pump?

A. For West.

Q. Did you see any other gasoline leak that night?

A. No, sir.

Q. Did you see anything that looked like a spring of gasoline or anything else in the Seminole that night?

A. There was water running out of a pipe that had broke off. The water mixture.

Q. Which pipe was that?

A. The pipe that was broke off on that.

Q. You mean the pipe that these two valves, Exhibit 11, were broken off of?

A. Yes, sir.

Q. What was running out of there?

A. Well, it was a mixture, mostly water, see. The boat sunk, and when the tanks filled up, when she come up the water, naturally run back out.

Q. Where did you see that running from?

A. Well, from the top of the engine hatch you could see it.

Q. And where did you see the liquid that was running out of this pipe?

A. Right in under,—in about the middle of the boat.

Q. How much of that pipe was visible above the water at that time?

A. Six or eight inches.

Q. Could you see the end of it off which those two valves broke?

A. Yes, sir.

Q. Was that above the surface of the water at the time you speak of?

A. Yes, sir.

Q. Did you see anything that looked like a bubbling up of gasoline or any other substance from the surface of the water, in the Seminole?

A. No, sir. In fact you couldn't see much around there that night nohow.

Q. Because of what?

A. Dark, and raining; only had a spot light,—a flash light.

Q. What was the condition of things in the engine-room, generally?

A. Pretty bad wrecked up.

Q. You mean there was a lot of debris in there?

A. Yes, sir.

Q. Now how long did you stay there that night,—Tuesday night and Wednesday morning?

A. I stayed there all night.

Q. Where did you sleep that night?

A. On a big barge that was on the north side of the shed.

Q. A steel barge with tracks on it?

A. Yes, sir; this boy and myself stayed there.

Q. You mean the boy that had been running the pump?

A. Yes, sir.

Q. Did you go aboard the Seminole the following morning?

A. We did later on in the day; went in for breakfast, and when we come back it was raining, and after the rain let up we went aboard.

Q. Did you observe the wooden stringers on which the motors rested at that time?

A. Yes, sir.

Q. What was their condition?

A. They was charred a little, but not burned too bad.

Q. How about the wooden floor boards of the engine?

A. In the center they was burned out—pretty much burned out.

Q. By "in the center" what do you mean?

A. In between the motors—

Q. How bad—go ahead and finish.

A. Right next to the generator motor there was some of the floor still there.

Q. How bad on the starboard side of the starboard motor?

A. It was pretty well gone.

Q. How about between the forward end of the motors and the forward bulkhead?

A. It was pretty well gone.

Q. Did you see the remains of the switch board that day?

A. Yes, sir.

Q. What was its condition, and where was it?

A. It was laying right down between the two motors, kind of catercornered between the two motors.

Q. Was it all in one piece?

A. No, sir, it was broke.

Q. In many pieces, do you recall?

A. No, sir, it wasn't so you couldn't put it together.

Q. Did you observe about the positions of the switches on that board at that time?

A. Well, there was—the switches—generator switch, discharge and charge switch, had been inserted, because one part of the knife was inserted to turn it.

Q. On which side?

A. On the discharge side.

Q. Did you find the main switch or any part of it?

A. No, sir.

Q. Did you see any of the field switches, the lighting circuit switches?

A. Yes, sir, found those.

Q. What position did you find those in?

A. They was all open, hadn't been closed at all.

Q. There is a piece of switch some place; do you remember that little brass piece? * * *

Mr. Botts:

Here you are, Mr. Underwood. * * *

Q. Now, Rollie; I show you a piece of brass or copper, marked Exhibit 18; do you recognize that?

A. That's it, a piece of one of the switches, all right; the knife.

Q. Could you say which switch that came from?

A. No, sir. There was a switch like that on the generator side, to cut the generator circuit together; and your main switch if big like that.

Q. That might be a piece of either?

A. It could be a piece of either, because there was two switches just alike, just about the same location, on each side of the board.

Q. Rollie, here is a piece of funnel, Exhibit 14. Did you have anything like that on the Seminole?

A. Yes, sir.

Q. Does that look like anything you had on the Seminole?

A. Yes, sir.

Q. I show you this instrument, Exhibit 17; did you have anything like that on the Seminole?

A. Yes, sir.

Q. Can you recognize what that was?

A. That's the drain trap.

Q. Where was that situated?

A. Set—this one set right under the corner of that bench against the forward bulkhead.

Q. Was this on the port or the star board line?

A. This was on the port line.

Q. Now there is one piece of pipe that ends up in a valve.

A. Yes, sir.

Q. See that? Where did the line run from out of that valve?

A. That runs in the feed to your port motor.

Q. Now this other piece—is that a valve? It is a T with a plug, isn't it?

A. No, sir, this year runs up on your bulkhead, and there was a mechanical gauge for filling, but it never did work. There was a regular disc.

Q. You mean, a round gauge?

A. Yes, sir.

Q. With a hand in it that is supposed to move back and forth?

A. Yes, sir. I don't remember just how they checked it, but it never did work, anyhow. This pipe run right up to the top of the tank and back into the gauge.

Q. You mean from the T that is in this other segment of this Exhibit?

A. Yes, sir.

Q. A disc gauge ran?

A. Yes, sir.

Q. Where did the line go from the end of this piece?

A. It went to your next tank.

Q. I show you another piece, Exhibit 2 I believe it is; do you recognize that?

A. No, sir. (Examining Exhibit.)

Q. Is that the same style or type of pipe and fittings that you had on the Seminole?

A. Yes, sir.

Q. Can you tell whether that came from the Seminole?

A. I can't just place where that did go.

Q. Well, we will pass that for the time being; it may come to you as you look at it; put it down there. Where did you sleep on the Seminole?

A. On the port side in the back, next to the bulkhead.

Q. In what sort of a place?

A. Well, it was about four and a half foot on the bottom, and it widened up over the engine—over the port engine, to about six or seven foot.

Q. That little space was right in the engineroom?

A. Yes, sir.

Q. But separated by walls; right?

A. Yes, sir; it sit out over about half of the generator motor.

Q. Now you have told us that there were valves in each of these feed lines beneath the traps. Were there any other valves in those feed lines between there and the carburetors?

A. No, sir.

Q. Were any valves back by the carburetors?

A. No, sir.

Q. Was there any connection between the bilge pump and the gasoline tanks, or the gasoline feed lines?

A. Bilge pump?

Q. Yes.

A. No, sir.

Q. Was there any method of pumping gasoline from the tanks of the Seminole into anything else, by means of a pump?

A. No, sir, not rigged up to do it.

Q. You mean you could have rigged it up?

A. Oh yes.

Q. Now what was the condition, from your observation, of the conduit in which the wires ran in the engineroom?

A. Well, they was all pretty well exposed, they looked good.

Q. Which was exposed?

A. Conduit.

Q. You could see the conduit?

A. Yes, sir.

Q. What was it made of?

A. That is below deck. Now I didn't see it on top of the deck.

Q. I am speaking, Rollie, about the conduit in the engineroom.

A. It was good in there.

Q. What was the condition of your carburetors in that last string?

A. Carburetors was in good shape.

Q. Did they leak?

A. No, sir.

Q. You have told us how you turned the engines off on that last occasion. From your experience with that boat, what gasoline would that leave in the carburetor end of the line?

A. It would leave a little, it would be, after you got below your jets, why it would leave a little in the bottom of your bowls.

Q. Would there be any gasoline in the carburetor?

A. Yes, a little bit.

Q. Was there any electric light in the space underneath the gasoline tanks?

A. Yes, sir.

Q. Where was that?

A. It was right in the middle of the space that was under there.

Q. What was that space used for?

A. That was used to store fittings—oil.

Q. How often did you go in there?

A. Quite often, if I wanted a fitting, or anything.

Q. Did you use that light?

A. Yes, sir.

Q. How was the light rigged up?

A. It was in a regular socket.

Q. How did the wires get to the socket?

A. They was run over there with regular box like thing, regular conduit arrangement.

Q. The wires were in the conduit up to the light socket?

A. Yes.

Q. In your experience, when you went under there, did you ever smell any gasoline under there?

A. No, sir.

Q. Did you ever see any gasoline leaks while you were under there?

A. Never did.

Q. Was it possible to use any part of the batteries while you were charging the other part?

A. No, sir. Do you mean, separate them?

Q. Yes.

A. No, sir, they was all—

Q. All in line?

A. In line.

Q. Now that spring, while you were in the boat, how many times did you take gasoline?

A. One time.

Q. Where was that?

A. Royal Palm Dock, here.

Q. Do you remember how much you took?

A. No, sir.

Q. Do you remember how—I didn't mean to interrupt you.

A. I might be mistaken as to that, because, I believe I took the gasoline to demonstrate it to a party, a time before.

Q. What do you mean by the time before?

A. Well, we was demonstrating it to a person that figured on buying it, and put some gas in then.

Q. This time you speak of, how much gasoline did you take?

A. I don't remember; I filled the tank right up to where the gauge read 2180 gallons.

Q. Filled them practically full?

A. Yes, sir.

Q. How were they when you left the Royal Palm Dock on the cruise?

A. They was full.

Q. Now on that cruise, what was that gasoline used for?

A. It was used for the guide boats and operation of the big boat.

Q. How many guide boats did you supply with gasoline from the Seminole?

A. Three.

Q. How was that done?

A. Through that can there, mostly.

Q. Filled the can?

A. Yes.

Q. Precisely where did you get the gasoline to fill that can?

A. Out of these two valves.

Q. Indicating Exhibit 18. What did you do with the can after you filled it?

Mr. Botts:

Excuse me, you call it the wrong Exhibit number. This is 13—no, this is 11.

Q. Just change it. What did you do with the can after you filled it?

A. Set it down under there under the bench.

Q. I mean after you filled the can, how did you get the gasoline to the small boats?

A. Well, out through the window, most of the time.

Q. The port window?

A. Yes, sir.

Q. Was there any other fitting on these valves, when you used the valves to fill the can?

A. Well, when the tank was pretty well full, we used a hose; but when they got down to level with the window, why you had to use cans to fill them.

Q. When you speak of using a hose, where did the hose run from, and where to?

A. Right out through the window.

Q. Directly from the outer valve, through the window, out into the small boats?

A. Yes, sir.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Schlappi, I want to be sure I clearly understood you about that filling line. As I understand it, starting from the filling end, it came down through the deck in the vicinity of the after part of the engineroom, is that right?

A. Yes, sir.

Q. And on the port side?

A. On the port side.

Q. And then it stood about eighteen inches, did you say, above the deck?

A. Yes, sir.

Q. And then how far below the deck did it extend on the bottom side?

A. Well, I wouldn't be sure, maybe eight or ten inches. I am not sure of that.

Q. Well, I don't want anything exact, but I just want to get as clear a picture as I can. Your recollection is, about ten inches?

A. Yes, sir.

Q. Then I take it that where it came down through the deck, was that in the room—within the engineroom?

A. Yes, sir.

Q. At ten inches below the deck, it turned at right angles and ran forward, is that right?

A. Yes, sir.

Q. That would be along the port side of the engine?

A. Just about over the generator motor.

Q. Well, the generator motor would be about the middle of this room, athwartships?

A. No, sir.

Q. What is that?

A. On the side of the boat.

Q. Well, I know, but the room was on the side of the boat, wasn't it?

A. Yes, sir.

Q. And the room came from the side of the boat, and part way over the port engine?

A. Yes, sir.

Q. What I was asking was, whether the filling pipe came down about the middle of that room.

A. Just about.

Q. Just about? And then ran forward through that room?

A. Yes, sir.

Q. And through the forward wall of that room?

A. No, it didn't go through the bedroom or living quarters at all. It started right at the living quarters.

Q. Started right at them; so the filling pipe would come down just forward of the forward end of that room, is that right?

A. Yes, sir.

Q. And then it ran from there to the forward bulkhead of the engine room?

A. Yes, sir.

Q. How long would that piece of pipe be?

A. I wouldn't say over eight feet.

Q. It was two inch pipe?

A. Yes, sir.

Q. Now was it one piece of pipe from the point where it began, eighteen inches above the deck, down to the point where it made the right angled turn?

A. Yes, sir.

Q. And how was that turn made? What was the nature of the connection there?

A. Elbow.

Q. What kind of an elbow?

A. A regular two inch brass elbow.

Q. Threaded connections on both ends?

A. Yes, sir.

Q. Where was this leak that you discovered during the trip?

A. Just about the middle of the pipe, in the union.

Q. There was a union in the middle of the pipe?

A. Yes, sir.

Q. The pipe was in two parts, and joined together in the middle with a union?

A. Yes, sir.

Q. So instead of being one piece eight feet long, it would be two pieces four feet long, or approximately that?

A. Yes, sir.

Q. Joined with a union?

A. Somewhere about that.

Q. Was there anything supporting that pipe, between the elbow and the point where it joined on the filling manifold?

A. There was a strap—I don't know whether it was on the front side of the union or on the back side; a regular strap come down from the girder, supporting it.

Q. There was a strap supporting it?

A. Yes, sir.

Q. By a strap, you mean a piece of iron?

A. Bolted to the girder. You see the top of the engine house is iron.

Q. Then wrapped around the pipe, and fastened?

A. Yes, sir.

Q. —back to the principal part?

A. Yes, sir.

Q. What kind of a union was this?

A. A ground-seat union, two inch brass.

Q. It was a good union, was it?

A. Yes, sir.

Q. Well now, tell me how soon after you started to fill, did that leak appear there?

A. It started pretty quick.

Q. Well, I understand now that you say you took gasoline two different times.

A. Yes, sir.

Q. The time you filled up the tank, was that the time, just before you started on the trip to the Keys?

A. I filled them up then.

Q. How much did you put in at that time?

A. I don't remember the amount.

Q. Well now there was a previous time when you had put in gasoline in the tanks, wasn't there?

A. Yes, sir.

Q. Did you fill the tanks up at that time?

A. No, sir.

Q. How much gasoline did you have after you finished that first time?

A. Well, I don't remember.

Q. Were the tanks half full or quarter full? Have you any idea?

A. No, sir, they wasn't half full.

Q. Somewhere between a quarter and a half, would you say? Is that as near as you can come to it?

A. I would say, a quarter.

Q. Now tell me about discovering the leak; how did you discover that?

A. Well, I went in there to adjust the valves, so as to equalize the tanks, see, and it was dripping down.

Q. From the union?

A. Yes, sir, just a drip.

Q. Steady drip?

A. Yes.

Q. And you fixed that by tightening the union, is that right?

A. Yes, sir.

Q. You say it hadn't leaked before?

A. No, sir. Well, it hadn't leaked the year previous to that.

Q. It did leak the first time you filled it in '35?

A. Yes, sir.

Q. Is that right. Let me get this straight; was this leak discovered the first time you put in gasoline, or the second time?

A. The first time.

Q. The time you put in the smaller quantity?

A. Yes, sir.

Q. I understood you, in answer to questions before, to say you went ahead and filled the tanks up after the leak was tightened; does that refresh your recollection on that?

A. I went ahead and finished putting in gas.

Q. Well, wasn't it the time you filled them up? I just want to get your recollection.

A. No, I am not sure whether it was that time or the time before.

Q. When you think of it now you are not certain about it; is that it?

A. Sir?

Q. As you think of it now, you are not certain of which time?

A. I won't say for sure; it is too long to remember that.

Q. Well, how do you account for the union springing a leak?

A. I don't know, not unless it was kind of a vibration from the deck or something, might have caused it. They will do that, but very little. It was a brass union with clean thread, anyhow.

Q. You say vibration does sometimes cause things like that to happen?

A. Yes, it would.

Q. Do you remember how many turns you took to tighten the union?

A. It didn't take a turn, even; just held one side of the union with one wrench, and put it on the nut and pulled down on it.

Q. Did you take half a turn?

A. Just about; not over half turn; between a quarter and a half.

Q. What did you take the turn out on?

A. On the nut.

Q. On the nut of the union?

A. Yes, sir.

Q. Now the switchboard, Mr. Schlappi, do you suppose you could draw a diagram of the switchboard for us, to show the location of the different switches on it?

A. I am a very poor draftsman.

Q. Well how big was the switchboard?

A. Oh about like that.

Q. You are measuring from your hand to the other end of the table?

A. Yes, sir.

Q. That would be close to four feet, wouldn't it?

A. No, sir; about four feet wide; it wasn't quite as wide as that.

Q. That distance you estimate about four feet, is the horizontal width, is that right?

A. No, sir, that is the vertical.

Q. That is the vertical dimension?

A. Yes, sir.

Q. Up and down?

A. Yes, sir.

Q. And how wide was it?

A. About three feet.

Q. About four feet up and down and three feet across?

A. Three and a half to four feet up and down, and three foot across, would make it pretty close.

Q. Well now, on this switchboard, suppose we draw on here the shape; I will make it a little longer this way. Would that be approximately the shape of it?

A. Yes, sir.

Mr. Botts:

Suppose you write the measurements in there; write top and bottom on there.

Q. I will put top up at this end, is that right?

A. Yes.

Q. And bottom at this end. And then we will say three and a half feet across?

A. Three feet tall.

Q. Three feet across, I will write three feet, giving the dimensions that way; and three and a half to four—was that what you said?

A. Yes, sir.

Q. Three and a half to four feet in the other direction. Now can you place in the corner where you said was the main switch?

A. Right in this corner, right there.

Q. Did that move up and down or horizontally?

A. It moved up and down.

Q. Up and down; how far up from the bottom would it be,—I mean the central poles.

A. That would be six inches from the bottom.

Mr. Underwood:

Let the witness do the marking of the paper.

Q. See if you can mark on that.

A. Something about in here.

Q. Now you have drawn two parallel lines to indicate the switch.

A. It was a double knife switch.

Q. Double knife switch. Now which is the hinged end of the two blades?

A. This is the hinged end here.

Mr. Underwood:

Indicating the bottom—

Q. Let's just make a big dot there.

Mr. Botts:

The dots indicate the hinged end?

A. Yes, sir.

Mr. Underwood:

May we draw a line here and indicate that main switch.
(Drawing arrow line to indicate.)

Q. Is that a double throw switch or is it only an open and closed position?

A. It is open and closed position.

Q. So the hinges are at the bottom?

A. Yes, sir.

Q. And the contact points are at the top, is that right?

A. Yes, sir.

Q. And you say the length of the points are at the top, is that right?

A. Yes, sir.

Q. And you say the length of the blades was about six inches? Did I understand you right?

A. No, they was about—I said they was about six inches from the bottom.

Q. How long were the blades?

A. About four.

Q. About four inches?

A. Three and a half or four.

Q. Now where was the charge and discharge switch located?

A. Set right in here. (Drawing). Right in the center of the board.

Q. That was a double throw switch, wasn't it?

A. Double throw; two to your contact, and two over here; and here is your hinge of the switch there.

Q. You might make a little dot there. Now in which position have you indicated the switch?

Mr. Botts:

Excuse me, let's get these points identified. This is in a closed position, one way, and over there would be a closed position the other. Suppose you get some identification points there.

Mr. Matteson:

That is what I am going to ask now.

Q. Have you indicated the switch as being in the discharge position or the charge position?

A. That is in the charge position, I am almost sure; I am not too sure; that is in the forward position.

Q. And if the switch were thrown over to make contact with the points to the left, it would then be what?

A. Discharge.

Q. Is that what you had in mind?

Mr. Botts:

Yes. Suppose you make an H at the point where the hinge of the switch was; and then put C and C for the contact points of the switch.

Mr. Underwood:

* We understand that. Would you rather have the witness do it? It doesn't make any difference. * * * Put an H over the hinges, C over the contact points to the charging end; and a D over the contact point at the discharge end.

(Thereupon the hearing was recessed to be resumed at 2:15 o'clock p. m. of the same day.)

Miami, Florida, 2:15 P. M., May 15, 1939.

Afternoon Session.

The Court:

You may proceed.

2219 Thereupon: ROLAND A. SCHLAPPI a witness produced in behalf of the respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Matteson:

Q. Now, Mr. Schlappi, we have two switches on this diagram of the switchboard in the engineroom. Before we leave this charge and discharge switch I wonder if we can indicate that in some way. Suppose you draw a small box around it in some way.

A. (Witness complies.)

Q. I have drawn an oblong line around the marks that you have made here and an arrow from it to the words "charge and discharge switch"; is that right?

A. Yes, sir.

Q. What other switches were there on this switchboard?

A. There was a group of switches up on top here, all the way across the board.

Q. Indicating above the charge and discharge switch?

A. Yes.

Q. How many were there of those switches?

A. I don't exactly remember.

Q. Five or six or can you give us any idea?

A. Between ten and a dozen, to all of the quarters in the boat.

Q. Were they in a single line across the top?

A. Double line; here to here; they were in a straight line but they were separated right in the center.

Q. There was a series of them, one above the other, at each side of the switchboard, is that right?

A. Yes.

Q. About how many on each of these sides?

A. I imagine there were five or six on each side; it was the same number of on side.

Q. How big were those switches?

A. Just small double knife-switches, about two and a half or two inches high.

Q. Did they come down on each side of the charge and discharge switch or were they all above the level?

A. They were all above the level.

Q. The way we have this spaced here (referring to diagram) it would not look to me that there was room for that many switches.

A. It may be a little bit high here, but there was room for them to come right across like that (pointing) up here, way up here to the places you wanted lighted; the names of the quarters was up here, the places you wanted lighted.

Q. Over this switchboard was a label?

A. Yes; the label was all in one panel, and there was stamped on the panel "searchlight, engineroom, boss' room", and things like that. For all the staterooms there was a switch for each one.

Q. A switch for each stateroom?

A. Yes.

Q. Now you have drawn two horizontal lines there. Is each one of these supposed to represent one switch?

A. No, sir; all of those switches came in here (indicating) just like that, and set right close together. See? They were just about one inch apart; just small switches.

Q. What do you call the piece going across horizontally?

A. That is just the line that the switches was in.

Q. Was each switch entirely separate from the other one?

A. Yes, they were insulated separate.

Q. There wasn't any electrical connection between them at all?

A. The ground on the inside of the board was on each one, and they naturally would be to save wiring.

Q. Then this horizontal line that you have down here does not indicate anything except the location?

A. Just the location.

Q. Do you remember the locations of any switches for any particular parts of the boat?

A. No, I don't remember just the locations. I know the searchlight switch was on this side.

Q. Indicating the left side?

A. Yes; it may have been in the middle or off to one side.

Mr. Botts:

May I suggest for the record that we let each of these lines indicate the several switches or something of that kind?

Mr. Matteson:

I will draw an arrow pointing to each of these horizontal lines: I will say "line of separate switches".

A. They just run in a straight line, but they were separated here in the middle a little bit.

Q. How far was the charge and discharge switch from the top of the panel?

A. Just about pretty near to the middle of the board, but not quite; that could have been a little bit lower, but it was pretty close right up there (indicating on diagram).

Mr. Underwood:

I take it that there is no intention to draw this to scale?

Mr. Matteson:

No, sir; it is just a representation.

Q. In other words, we have that charge and discharge switch a little bit too high?

A. Yes, sir.

Q. It was nearer the middle of the board?

A. Yes.

Q. Slightly above the middle?

A. There was a circuit-breaker down here and that would about equalize the distance from the center of the board for them two.

Q. So that the charge and discharge switch, plus the circuit-breaker, were just about the center of the board?

A. Yes, sir.

Q. Was that the way it was?

A. Yes.

Q. What was this circuit breaker?

A. It was there in case your generator stopped; it protected your current and there would be no short or anything.

Q. Was that a sort of automatic switch?

A. Yes, sir.

Q. What other switches were there on the board?

A. They had a switch similar to this on the—

Q. Similar to the main switch?

A. Yes; about the same location; that generator switch was just about the same size.

Q. That is the generator switch?

A. Yes, sir.

Q. I will draw—first I will write “generator switch” with an arrow pointing to what you have just drawn. Were there any other switches on the board?

A. Yes. There was the Frigidaire switch in the center; that had a sort of knife-switch, and then the sanitation and fresh water pump. That was right down at the bottom of the board and the switch for the frigidaire was in the middle.

Q. Will you draw those in for us?

A. Yes. This is a single-throw knife-switch about here, and here is your frigidaire switch, and you pull that right straight out, shove it out.

Q. That is the frigidaire switch?

A. Yes. These are regular button switches here that you turn on and off; shut them off one way and on the other.

Q. Those are represented by the little circle?

A. Yes; one was for salt water pump and the other was fresh water.

Q. Which was which; do you remember?

A. I think this was the salt water pump on the right-hand side.

Q. Is that (pointing) the salt water pump?

A. Yes.

Q. And the other was the fresh water pump?

A. Yes, sir.

Q. I will draw an arrow there and write "fresh water".

Do we have all the switches on the board now?

A. No, sir.

Q. All right.

A. The circuit breaker comes right here about like that.

Mr. Botts:

Mark that "circuit breaker".

Mr. Underwood:

You can write that right inside there.

Q. "Circuit breaker"; is that right?

A. Yes. Here is a switch on this board for your auxiliary and small emergency generator, and this is a double-throw right here (indicating).

Q. Now you have indicated here (I will draw a box around it as before) the auxiliary generator switch, is that right?

A. Yes, sir.

Q. That had charge and discharge ends the same as the main charge and discharge switch?

A. Yes, sir.

Q. Did the ends correspond with the charge on the same end as the other one?

A. I don't know; I don't remember that. This is a double throw switch; it didn't have any charge or discharge on it. You used this same switch for that, after you pulled this generator switch off, and you used this switch here to throw your circuit in there to the small generator; that is the way it was.

Q. Why did you have to have two ends to it?

A. They were just on there; I imagine that's the way it was made up. There was another switch in there to use for starting this generator motor over here at the—

Q. Where was that?

A. That sat right up in here at this switch. I don't remember whether they laid in a line at the top of each other; I think they laid in a line to each other on the top. That switch should be here and one here (indicating).

Q. What were these switches?

A. One of them was to start this big generator.

Q. And the other?

A. Was to throw your circuit further on this generator up to this switch.

Q. Did you tell us about one additional switch or two?

A. One.

Q. And that was for starting the auxiliary generator?

A. Yes.

Mr. Underwood:

Auxiliary or main?

The Witness:

Main.

Q. For starting the main generator?

A. Yes.

Q. And that was just to the right of the auxiliary generator switch?

A. Yes, sir.

Q. Can you indicate that there?

A. Yes, if I can rub this out.

Q. You mean the drawing you made of the auxiliary generator switch?

A. Yes.

Q. Yes; you can change it any way you like?

A. (Witness indicates on drawing.)

Q. I will rub this out a little better for you.

A. (Witness indicates on drawing). Here is a switch over here. They are both double throw switches but we never used to throw but one of them.

Q. Now this is the auxiliary generator switch (indicating)?

A. Yes, sir.

Q. Is that right?

Q. What is this (pointing)?

A. That is a switch used for starting the big generator.

Q. Shall we call that "generator starter"?

A. Yes.

Q. Now have we got it complete?

A. Well, we had volt meters and ammeters up across here.

Q. How many volt meters were up there; volt meters and ammeters?

A. Four.

Q. Were they equally spaced across the top?

A. They were spaced like that in a kind of circle like.

Q. You have drawn four circles across the top to indicate the four meters, is that right?

A. Yes, sir.

Q. Now is it fairly complete?

A. Yes. There is a bus bar in here; it sets right in there.

Q. What is a bus bar?

A. Why, that regulates the voltage.

Q. Where there is resistance?

A. Yes, sir.

Mr. Underwood:

Mark that.

Q. Does that represent it?

A. Yes, sir.

Q. I will mark that "bus bar".

A.. That's kind of out of my—that is right to the best of my memory.

Q. Well, we won't hold you to exactness on it?

A. It may be above there.

Q. You have indicated it at the side of the charge and discharge switch, but you say it may have been above it, is that right?

A. Yes.

The Court:

Put a question mark at the end of it.

Mr. Underwood:

Why not write across the top there "ammeters and volt meters" and then draw a line from each of them?

Mr. Matteson:

All right.

Mr. Underwood:

I think it is understood that the doubt in the witness' mind is not as to whether there was a bus bar but the doubt is as to the location?

Mr. Botts:

That is correct.

A. There is a bus bar and rheostat on the side, too.

Q. What shape are they?

A. Round.

Q. Circular?

A. Yes, sir.

Q. Are they on the switchboard?

A. Yes, sir.

Q. Are you drawing it there?

A. That slipped my memory; it was a long time ago, but it was here on this side of the board.

Q. How big was that?

A. Just about four and a half inches in diameter.

Q. Round?

A. Yes.

Q. Just draw a circle about where you think it was and we will put a question mark after that, if you are not sure.

A. I am under the impression it was under this switch.

Q. Under which switch?

A. Under this switch or on the side; I think it was under this switch.

Mr. Botts:

As I understand, it was there at the righthand side of the circuit breaker or under the main generator switch?

A. This rheostat was on the righthand side.

Q. As you face the board?

A. Yes. You better put a question mark after that too.

Q. We will mark that "rheostat".

Mr. Botts:

Put a question mark there with reference to the location and not as to the existence of the rheostat.

Q. Then there was a light at the upper lefthand corner of the board to throw light on the switchboard?

A. Yes. When you contact this switch or that switch this light went on automatically; that is the only one we didn't have a switch on.

Q. When you contacted the main switch and the discharge switch the pilot light went on?

A. Yes; right here; it came out from the front of the board like that.

Q. I will draw an arrow pointing to that and say "Pilot light". Now is it complete?

A. Yes.

Q. According to the best of your recollection?

A. According to the best of my recollection?

Q. Yes.

A. Yes.

Q. How far was it from the floor up to the bottom of the switchboard?

A. Up to the bottom of the switchboard?

Q. Yes.

A. I would say about four feet, something like that.

Q. I will draw a line from the bottom of the switchboard downwards and another horizontal line which I will mark "floor". You said it was how many feet?

A. I will say four feet. You had to climb up on a ladder to get to these top switches.

Q. You mean the switches to the different quarters?

A. Yes, sir.

Q. What sort of a ladder did you have?

A. A regular steel ladder.

Q. Was that ladder fixed in place?

A. Yes, bolted in place.

Q. You would have to climb a portion of the way up that ladder to reach the room switches?

A. Yes, sir.

Mr. Matteson:

I offer this drawing in evidence.

The Court:

Let it be admitted.

(Thereupon the drawing above referred to was marked Libelants' Exhibit number 110.)

Q. I think you said something about wooden stringers under the floor of the engineroom. Will you explain to me what those were?

A. They was just on top of the girders to fasten the floor down; for the hatches to set on.

Q. By hatches you mean the floor boards?

A. Yes; they were made like regular hatches, you know, that lift up.

Q. The girders are a part of the steel structure of the hull?

A. Yes.

Q. Did they run fore or aft?

A. They run crossways.

Q. Athwartship?

A. Some of them run crossways and some run forward, too.

Q. Are they all the same height above the bottom of the vessel?

A. No. Those on top are the end members.

Q. These cross-members go above those that run fore and aft?

A. Yes, sir.

Q. So the wooden stringers would have to set on the cross-members?

A. Yes.

Q. What was the size of these wooden stringers?

A. I don't recollect what size they were.

Q. Were they 2 by 4, or bigger or smaller?

A. They were heavier than 2 by 4s.

Q. How were they fastened in place, do you know?

A. You know the engine-bed timbers was lengthways.

Q. I have not come to those yet. These fore and aft timbers were floor supports and they fastened on top of the cross-members—how were they fastened?

A. They were fastened on top like this.

Q. Now we are down to the wooden stringers; you said they went on top of the cross-stringers?

A. I don't know how they were fastened. I never taken any particular notice of it.

Q. You said the engine supports were wide?

A. Yes, sir.

Q. How big were they?

A. Well, they run from pretty good size, they were wide forward and they slanted down to the line of the shafts, and they must have been built up to about 6 x 12 in the front end and they tapered down.

Q. So that at the after end of the engines they would not be as thick as at the forward end, is that right?

A. Yes, sir.

Q. How many of them were there for each engine?

A. Two; one on each side.

Q. You mean one fore and aft support under each side of the motor, under each side of each motor?

A. Yes.

Q. When you left the ship in Ft. Lauderdale did you take up the floor boards or did you leave those in place?

A. I cleaned up all of the oil and stuff.

Q. They floor boards lifted up, they were removed, is that right?

A. Yes, I had to lift them to shut off the water valves.

Q. I was asking you when you left the boat whether they were in place?

A. Yes, they were in place.

Q. So you had to lift them up and you replaced them, is that right?

A. Yes.

Q. You spoke of a place which you said you could look through and look into the trays that the tanks sat in. Is that space shown on this exhibit, Respondents' Exhibit 4?

A. Is that tank 4?

Q. No; that is the number of the exhibit?

A. Yes, you could see right down in here in the tray; that tank has been raised up here. You see this valve came right above the center and floated up.

Q. As it was before the fire the valve would have been just nicely centered in the opening, is that right?

A. Yes, sir.

Q. So this picture indicates that the bottom of the tank has been raised up by the fire or explosion, is that right?

A. Well, the water might have floated it up.

Q. Or something?

A. Yes.

Q. Then if that tank were down in place so that the valve was centered under the hole, the bottom of the tank would be below the bottom of the hole, would it not?

A. Yes.

Q. Do you recognize this picture as a picture of the valve of number 1 tank, that is, the port tank, as it was after the fire?

A. Yes; it looks very much like it. There is the shelf.

Q. What is this bracket that appears to the left?

A. That is what that bilge pump sat on.

Q. That was on the port side of the bulkhead right next to the outlet, is that right?

A. Yes.

Q. And that same bracket is shown in this other photograph, Exhibit 9, just to the left of the mark "number 1", is it not?

A. Yes, sir.

Q. The arrow from number 1 points to the opening through which the valve to the number 1 or port tank came, is that right?

A. Yes, sir.

Q. And that shows the entire bracket?

A. Yes, sir.

Q. Towards the starboard side from the one we have been talking about; were these the two brackets that supported the shelf?

A. Yes.

Q. Over at the starboard side in this same picture

A. Yes.

Q. And the bilge pump was on that shelf?

A. Yes.

Q. Over at the starboard side in this same picture there are a couple of shelves or brackets, or what is left of them, sticking out. Were those the shelves that the batteries were on?

A. Those were the battery shelves, yes.

Q. What is this that is apparently under the batteries?

A. That is the fresh and salt water sanitary pumps.

Q. Those were underneath the shelves where the batteries were?

A. Yes.

Mr. Botts:

Suppose you mark those on that picture?

A. I don't know whether that is true or not, but that is my recollection. This is the salt water pump here. I can see it good now, and the fresh water pump sat right here.

Q. Towards the starboard side?

A. Yes.

Q. I will mark that "salt water pump". The arrow now points to the salt water pump, is that right?

A. Yes, sir.

Q. And the fresh water pump was toward the starboard side from that?

A. Yes, sir; sitting right in a line with it.

Q. As this picture is taken it would be behind the salt water pump?

A. Yes, sir.

Q. This dark spot on the picture indicated by an arrow and the line "A", is that the opening into the space under the tanks?

A. Yes, sir.

Q. How big was that opening?

A. I could crawl through it pretty easy.

Q. How big was it?

A. I would say between 18 and 20 inches.

Q. Square?

A. Yes, sir.

Q. Now between the shelf that was on these brackets and the shelves that held the batteries, did I understand there was another table or desk there?

A. There was a regular desk there.

Q. What did that consist of?

A. It consisted of a table and a slate 'o write on.

Q. I am trying to get a picture of the desk; was it flat like a table?

A. No, it was on a slant.

Q. On a slant?

A. Yes, sir.

Q. How big was it; how big was the top?

A. Just about two feet square.

Q. How high was it above the floor?

A. Just about like this.

Mr. Underwood:

Indicating a little above your belt, three and a half to four feet?

A. Yes, sir.

Q. Outside of the top of it it was like a shelf; what else was there to it?

A. Nothing but a drawer underneath.

Q. Then did it have legs?

A. No, it was built right straight from the floor.

Q. The front of it was solid?

A. No, the sides of it was solid; it was built right straight up.

Q. That is, the sides were?

A. It was full-sized sides.

Q. The sides were as wide as the table was deep, is that it?

A. Yes, sir.

Q. And they were solid from the floor right up to the shelf?

A. Yes, sir.

Q. You say this drain line that came over from the starboard side was supported where it passed through holes in these sides?

A. Yes, sir; came right to this side over here; right through this side.

Q. Then the drain valves would be between the shelf on which the bilge pump rested and the port side of the desk, is that right?

A. Yes, that is right.

Q. How much space was there between that shelf and the port side of the desk?

A. Well, there wasn't too much space; I would say a foot.

Q. About one foot between them?

A. Yes.

Q. Room enough for these gasoline cans to go in between them?

A. It was so much higher that you don't or didn't have to bother about that; you see this shelf was higher than the desk, too; this drain was below the top of the shelf.

Q. It was below the top of the shelf on which the bilge pump stood, is that right?

A. Yes, sir.

Q. So when you put the cans under the valves to draw off some gasoline, it could go in under the edge of that shelf?

A. Yes.

Q. Directly over this opening through this bulkhead through which you crawled to get under the tanks, I notice some bolts in that plate; what was fastened on the bolt there, do you recall?

A. The ship's clock was up there; that was right over the desk; that is where it was, too.

Q. These four bolts that you see here, are they what held the ship's clock in place?

A. Well, it was off a big mahogany panel.

Q. These four bolts are what held the panel?

A. Yes.

Q. What is this motor that appears in this picture, Exhibit 9, which appears to be more or less under the desk on which the bilge pump sat?

A. That is the auxiliary motor setting under there.

Q. That is the auxiliary generator?

A. Yes, sir.

Q. We noted in this picture the round opening through which the outlet valve of the number 1 tank came. Can you see us here also the other openings indicated by the numbers 2 and 3?

A. Yes, sir.

Q. Are those openings for the number 2 and number 3 tanks?

A. I can see that one all right; those must be back in that other "slip".

Q. It is in the shadow there?

A. Right.

Q. And the forward one would be over in the shadow at the right of the picture where nothing shows clearly, is that right?

A. Yes, sir.

Q. Now turning to Libelants' Exhibit 6, this shows the tops of the tanks, does it not?

A. Yes, sir.

Q. And I see that they come up pretty close to the top of the bulkhead around that part (indicating)?

A. Yes, sir.

Q. What was right over the top of those tanks; was the floor of the deck above pretty close to the tops of the tanks?

A. There was pretty heavy truss work overhead for lifting the hatches and stuff, and it run the full length of the engineroom.

Q. What space in the ship was over this tank compartment, do you know?

A. Well, there was a steel passageway bolted right down—

Q. I don't quite follow you on that. There was a steel plate all over the top of the engineroom?

A. Yes, sir.

Q. Did that cover the tank compartment, too?

A. Yes.

Q. So these tanks as shown in this picture came up within a few inches of the steel ceiling that was over the two compartments, is that right?

A. Well, that truss work I believe that came over—

Q. What do you mean by truss work?

A. To hold up the steel plates that go on top.

Q. Sort of members to hold up the steel plate?

A. Yes.

Q. In this picture, Exhibit 9, the vent line is indicated by this arrow with the words "Vent Line"?

A. Yes.

Q. And this shows that the vent line out of the middle of the top of each tank, and that the line then led aft and joined a common line that ran over to the port side of the ship, is that right?

A. Yes, sir.

Q. And that vent line was a half inch line?

A. Yes, sir.

(Recess.)

Q. I show you this picture, and ask you if you recognize that as being a picture of the wreckage of the forward part of the Seminole, from the tank space, looking forward.

A. Yes, sir; the water tank is here.

Q. That shows the water tanks under the floor on the starboard side?

A. Yes, sir.

Q. In this picture, can you show us where that athwartships bulkhead was that you said separated the bilge from the forward part?

A. Here, it is right in there; in behind this water tank here. Just back of this water tank about two foot.

Q. I will draw an arrow indicating water tanks; and the after end of this water tank comes almost to the bottom of the picture, does it?

A. Yes.

Q. So that the bulkhead that you speak of would be just aft of that?

A. Yes, sir.

Q. And were there other tanks on the port side of the ship?

A. Water tanks, yes, sir.

Q. Water tanks on the port side of the ship, opposite this one that I have marked?

A. Yes, sir.

Q. And there was a space between the water tanks, running forward and aft?

A. There was a big tank sitting there, too.

Q. A big tank in there, too?

A. Yes.

Q. Well, can you show us in this picture approximately where that hatch was that you said you lifted up to get down between the tanks?

A. The hatch was sitting right along in here, about the edge of these tanks.

Q. That would be just at the forward end of—

A. Of these tanks.

Q. —of the tanks on the starboard side, right about there?

A. Yes, sir; that hatch was right there.

Q. Right where?

A. Right there.

Q. Well, will you put your pencil down on the picture so I will see where you are pointing?

A. Right there is the site of it.

Q. Right there? (Writing on Exhibit with pen.)

A. Yes, sir.

Q. I draw a second line, with an arrow, and the word, hatch, as I did the first time, and I will make a wavy arrow through the other line that I drew, to show that it is crossed out.

A. Yes, sir.

Q. And that is about where the hatch was?

A. Yes, sir.

Q. And that was forward of the bulkhead that separated the forward bilge space from the engineroom and tank bilge space, is that right.

A. You see when you come by this section here, you come back to the center of the boat again; your hall and staterooms on both sides. Here is where you went through there and turned to come up through the center of the boat.

Mr. Matteson:

I will ask to mark this photograph as an Exhibit.

Mr. Underwood:

When was it taken?

Mr. Matteson:

It was taken last year, sometime.

Mr. Underwood:

1938?

Mr. Matteson:

Yes.

Mr. Underwood:

I have no objection to it as portraying conditions when it was taken, in 1938, or the general structural conditions that time would not change.

(Said photograph was received in evidence and marked as Libelants' Exhibit number 111.)

Q. Here is another picture that was taken about the same time, and shows the upper part of the bulkhead supporting the engineroom from the tank compartment, does it not?

A. Yes, sir.

Q. And there we have the round holes at the top of the bulkhead. Are those the holes through which the filler pipes went?

A. Yes, sir.

Q. Would you point to me the holes through which the filler pipes went?

A. There is one that don't belong there. This one here is a filler pipe; this was a filler pipe, here.

Q. When you say there is a filler pipe, we will mark that with an X.

A. And this one, and that one.

Q. And this one?

A. Yes, sir.

Q. Do you see the fourth one?

A. No, sir, there is something hanging over it.

Q. It would be approximately here, is that right?

A. Yes, sir.

Q. I have made four X's to show the four filler pipe lines: Is that right?

A. Yes, sir.

Q. The one at the starboard side being covered up by some object?

A. Yes, sir. They come right straight and parallel from the bottom right on up; all of the holes in the center of the tanks, and in line.

Mr. Underwood:

This was taken in 1938.

Mr. Matteson:

Yes.

Mr. Underwood:

On the boat which was partially sunk, I take it?

Mr. Matteson:

That is correct.

Mr. Underwood:

I have no objection to it, on the same terms as the previous one.

(Said photograph was admitted in evidence and marked as Libelants' Exhibit number 112.)

Q. Now, Mr. Schlappi, picking up this exhibit number 2, have you been able to identify that yet?

A. I have not; not the way it is burned up.

Q. Of course it has been apparently deformed by being through the fire.

A. Yes, sir.

Q. This valve that is on it, was that similar to the valves that were on the tanks,—outlet valves?

A. That is the same kind of valve, all right.

Q. Same kind of a valve as shown in Libelants' Exhibit 4, is that right?

A. Yes, sir.

Q. Now these valves came out through the holes in the bulkhead, and then they were joined together by one long combination of parts, is that right?

A. Yes, sir.

Q. Could it be that when this was straightened out, it was the connection on one of the tanks, and a combination of pieces of pipe which was part of the manifold line? You would have to bend this piece around, I assume, where it has apparently been bent out of shape.

A. This has been made up—

Q. How is that?

A. Is that just as it come out of the fire?

Q. That is what the witnesses have testified. Is that the kind of pipe that was used to make up the manifold line?

A. Yes, sir, the same sized pipe.

Q. Same type of connections?

A. Yes, sir.

Q. And the same type of valve?

A. Same type of valve.

Q. Did you use that type of pipe for anything else in the engineroom except the gasoline feed line and connections?

A. I had a primer rigged up to the bilge pump and the salt water tank, of that size pipe; but I don't remember whether it was brass or galvanized iron.

Q. Well, I take it that, except for its deformity, this could be a part of the manifold line?

A. It looks like some of it.

Q. Now I take it that this exhibit number 17, you do recognize?

A. Yes, sir; that there was on the port motor.

Q. Now beginning up here at this connection, which is at the upper part of the trap, coming out at an angle here, what did that fasten to?

A. Back to your main feed line.

Q. To the main feed line?

A. Yes, sir.

Q. Would there be a T in the main feed line, and then a nipple to connect with this union outside the trap?

A. No, sir.

Q. What?

A. I swear I don't remember.

Q. Was this underneath the desk?

A. Yes.

Q. So that you wouldn't see it very readily, very often?

A. Well, if it wasn't underneath the desk, it was underneath the end of the bench.

Q. Underneath the end of the bench?

A. Yes, sir.

Q. So you can't recall just how it was connected up?

A. No, sir. It would have to be made up with unions to make up the pipe.

Q. Well now, you are speaking of the manifold line and all the way across?

A. Yes, sir.

Q. You say you would have to have a union in each series of pipe connections?

A. Yes, sir.

Q. Between these two tanks?

A. Yes, sir.

Q. But now as I understand it, this contrivance that I hold in my hand was hitched into the manifold line somewhere?

A. Yes, sir.

Q. Well, what I am trying to get at is, what it was hitched into; and I asked you if there was a connection in the manifold line with a nipple connecting with this union on the strainer.

A. I don't remember just how that was.

Q. You don't remember how that was? This short connection on the strainer, is the part that was connected to the manifold line in some way, is that right?

A. If it was connected up right, it would be.

Q. Well, coming out of the opposite side, and fastened lower on the strainer, is another series of connections. Now what did they lead to?

A. This here looks like the main feed line pipe here.

Mr. Underwood:

Indicating the one that ends in a valve.

Mr. Matteson:

That is right.

Mr. Underwood:

The straight piece.

Q. You call this piece of pipe that comes out of the lower part of the strainer,—a short piece, threaded on both ends,—you call that a nipple?

A. Yes, sir.

Q. Then that comes into a union, doesn't it?

A. Yes, sir, a T.

Mr. Botts:

A. T. It is not a union.

Q. T connection. And then at right angles apparently running downward there is another nipple, union, nipple, and a valve?

A. And a valve.

Q. Is that right?

A. Yes, sir.

Q. A reducer and a valve, is that right?

A. A reducer, quarter to three eighths.

Q. Which end is the three eighths?—Does it get bigger as it goes down, or smaller?

A. There is a reducer there too, isn't there?

Q. In the opposite end?

Mr. Underwood:

Indicating the open end of the valve?

Q. Indicating the open end of the valve, yes, sir; so there was a reducer on each end of this valve, is that right?

A. From the looks of it, there was. This is the port feed line here.

Q. I will come back to that in just a minute. This part that now terminates with a valve, you say that was the feed line to the port engine?

A. Yes, sir.

Q. Now then, going back to the connection again, we have a line of pipe coming out with another T and some more pipe. Now what did those connections lead to?

A. These here?

Q. Yes.

A. They led on across to the next tank, to another T, and the other drain trap on the starboard motor connection at that feed line,—at the number 2 tank, would be the way you have it.

Q. We started out with this contrivance by saying that the small connection on the port side of the strainer, connected to the manifold line; is that right?

A. Yes, sir.

Q. That is, to the manifold line connecting with all four tanks?

A. Yes, sir, with all four tanks.

Q. Then at the top of this strainer, if all the valves were open, you would have a supply of gasoline available from all four tanks, is that right?

A. Yes, sir.

Q. Now going back to this connection at the far end of the thing, what do you say that connected with?

A. It went to a fuel gauge that didn't register.

Q. Oh yes, I remember; that was the old fuel gauge that didn't register?

A. Yes.

Q. And then the pipe continues beyond that; where did that go?

A. It went over to the next drain, the next filter.

Q. Over to the next filter?

A. To the starboard motor.

Q. And what was the purpose of connecting two filters?

A. I don't know they figured it out, but that's the way they was.

Q. They connect at the upper half or the lower half of the filters?

A. I don't remember that.

Q. You just remember that it did connect with a filter on the other line?

A. It connected with a filter on the other line; there was two filters just alike, they both come inside of the filter. I imagine they figured one filter would catch it from either side.

Q. The bottom of this filter part of this combination Exhibit 17 was a threaded connection apparently?

A. It was the male end of a tube union in there.

Q. And where did that lead?

A. It led to the carburetor of the auxiliary motor.

Q. Then you mean that the little auxiliary motor was fed from the bottom of this filter, is that right?

A. Yes, sir.

Q. So that, as I understand the purpose of this filter, it is that water or impurities will collect in the bottom of the filter, is that right?

A. That is right.

Q. So in this case, instead of collecting in the bottom of the filter, they were immediately fed to the auxiliary, is that right?

A. You got it; that's the way it was, all right.

Q. And this filter was connected up with the other filter?

A. Yes, sir.

Q. So apparently it would take care of both of those, is that right?

A. Yes, sir.

Q. Now you say the other filter has a place at the bottom for some sort of connection too, did it not?

A. It had a plug in it.

Q. It had a plug in it; that is what this strainer contrivance is intended to have?

A. That is what it is supposed to be.

Q. That is what it is supposed to do is that right?

A. Yes, sir.

Q. Referring to the valve part of this assembly, again, there is a reducer on the pipe end of the valve,—pipe of the valve, and I think you said there are the remains of a reducer that has been broken off of the other, is that it?

A. It looks like a piece of it.

Q. Now the only purpose of using reducers at each end of this valve, would be to make use of a valve that wasn't the right size for the pipe line, is that right?

A. Yes, sir.

Q. I think that you said that it was necessary to prime the engines when you started them?

A. Yes, sir.

Q. Why is that?

A. Well, you use so much air, and such a long ways from the carburetor through one of them,—your carburetor was installed right on the back of the motor and the manifold runs the full length, and it took a lot of air to get juice to them; and when you give three or four shots of air you wouldn't have much air left; that is the reason you prime them.

Q. You had air tanks in which you compressed air, and you started the motors by opening the valves so that the air was admitted to the cylinders and started the motor turning over, is that right?

A. Yes, sir; you had a cam shaft to open to the right position.

Q. And you say your air tanks were of such capacity that, to turn them over more than three or four times, you would run out of air; is that it?

A. Well, it would cut your air down pretty fast. You prime them, and use them not over two cylinders, why they would go.

Q. You prime them, they start right away, is that it?

A. Yes, right away; there is the idea.

Q. And that is the way you always started the motors?

A. That was the way I always started them.

Q. And you got the gasoline to prime the motors with, out of this drain valve?

A. Yes, sir.

Q. When you drew it out of the drain valve, what did you draw it into, when you used it for priming purposes?

A. A regular brass squirt can; hold about a quart, each one of them.

Q. You would unscrew the top of the can and hold the opening under the spigot or what do you call it?—under the valve?

A. I generally got it when they was filling the boat up; just stick the can right down in there.

Q. That is when you were drawing gasoline for the boats, in the big can?

A. Yes.

Q. Then you could fill your squirt can by immersing it in the can full of gasoline, is that right?

A. Yes, sir.

Q. So you kept a squirt can of gasoline available for priming, is that right?

A. You generally used just about a squirt can for each motor, to prime them.

Q. Well, in any event, that is what you did do?

A. Yes, sir.

Q. Where did you keep the squirt can when it wasn't in use?

A. I had a brass tray setting right on the desk.

Q. What other purposes did you use this gasoline drain valve for?

A. That is all, just to get gas.

Q. Well, to get gas for the fishing boat, and to get gas to prime the motors?

A. Yes, sir.

Q. Did you have occasion to get gas for any other purpose?

A. No, sir.

Q. On this trip that you took down to the Keys, the vouchers are here I believe, which show the amount of gasoline that you purchased. Do you recall that it was 1540 gallons at the time you started out? This voucher number 2929 of the Boulevard Mortgage Company, shows the payment for 1450 gallons of gasoline, charged on April 4th, and under it is invoice for Bay Supply Company, showing 1540 gallons of gasoline purchased on April 4th. Does that refresh your recollection about that. Is that approximately the amount that you got on April 4th when you started for the Keys?

A. Well, have they got one there for 500?

Q. Yes, we have another one here for 500. Here is one, an invoice dated February 27, for 500 gallons. Do you recall that?

A. Yes, sir, that's the first lot put in.

Q. 500 on February 27 was the first lot, and the 1540 on April 4th was the second lot, is that right?

A. Yes, sir.

Q. Do you recall going to Ft. Lauderdale for the Seminole about the 26th of February, was it—of 1935?

A. No, sir, it was the first of February.

Q. Are you sure about that?

A. I am pretty sure it was the first of February. That's a long time ago. It was in February, but just what date why I don't remember. I thought it was right around the first of the month, either the first of February or the first of March.

Q. I see by the bill of Captain Pilkington for storage on the Seminole for February 1935, that a full month's charge of \$50 was made and paid. Does that bring to your mind whether or not it was near the end of February that you left Ft. Lauderdale?

A. Close to the first of March, then.

Q. Were you going to add something to that, Mr. Schlappi?

A. No, sir.

(Discussion between counsel.)

A. It was the first of March.

Q. I show you, Mr. Schlappi, this letter, which is marked as an exhibit,—Respondents' Exhibit F; copy of a letter to Captain Pilkington, authorizing him to turn the Seminole over to Willie Baker, and it is dated February 23, 1935. Does that bring anything to your mind about the date that you left there?

A. No, sir; I believe it is nearer the end of the month, than that.

Q. Nearer to the end of the month than that?

A. Yes, sir.

Q. Sometime between February 23 and the end of the month, is that right?

A. Yes, sir.

Q. Now did you buy any gas at Ft. Lauderdale before you left for Ft. Lauderdale?

A. I got 5 gallons of fresh gas to prime her with.

Q. Five gallons?

A. To prime the engines with. The gas that was in the outfit wouldn't start.

Q. There was gas in her then, was there?

A. Yes, sir.

Q. And you got 5 gallons of fresh, to prime her with?

A. Yes, sir.

Q. And after you got started, you had enough gas to get to Miami?

A. Yes, sir.

Q. Do you remember how much gas showed in the tanks at that time? I mean when you got to Ft. Lauderdale and tried to start the engines?

A. When we left Ft. Lauderdale?

Q. Yes.

A. Right close to 300 gallon.

Q. That is when you left Ft. Lauderdale towards the end of February, 1935?

A. Yes, sir.

Q. Now, do you recall about this trip to the Keys? Was it February 4th,—I mean April 4th, that you started out on that trip?

A. It was right around there, close to that.

Q. It was April 4th that we just saw that you bought the 1500 gallons of gas.

A. We left at one o'clock in the night; whether it was the 4th—late at night.

Q. One o'clock that night, or one o'clock at night.

A. One o'clock in the morning.

Q. And was that the 5th of April, or can you tell us what date it was?

A. I can't remember. That is about four years.

Mr. Matteson:

If your Honor please, Mr. Underwood and I were trying to figure out the day that she left, and one of the exhibits, WW contains a bill of the Florida East Coast Hotel Company for storage of the Seminole at the Royal Palm Dock, which shows that she was charged for wharfage for April 1st to 5th, inclusive. So from that it would appear that she must have been there on April 5.

Mr. Underwood:

So it seems to me.

Q. Now, Mr. Schlappi, we have figured it out here, the Seminole must have left Miami the early morning of the 6th, and returned sometime on the 15th or 16th of April, 1935.

A. She left after midnight for Matecumbe.

Q. How long did it take her to get to Matecumbe, can you tell us?

A. Right around ten hours.

Q. And did you go right through to Matecumbe?

A. Yes, sir.

Q. How long did you stay at Matecumbe?

A. Why they picked up a party on the small boat and brought them out. We didn't stop at Matecumbe,—didn't go into dock at Matecumbe.

Q. A party came out on the small boat?

A. Yes, sir.

Q. Then how long did you stay there? Did you stay there any length of time, or go right on?

A. Just run down long enough for them to get aboard.

Q. And where did you proceed from there?

A. Down to Bahia Honda.

Q. And how long did it take you to get there?

A. Four and a half to five hours.

Q. And what did you do when you got there?

A. Come to anchor and laid three or four days there.

Q. And where did you go from there?

A. Went over through old Spanish channel to Harbor Key.

Q. How long did it take you to get there?

A. I am not sure of the time; it took quite some time.

Q. Well, about, not exactly necessarily.

A. We left about nine o'clock, and it was very close to three, as well as I can remember, when we got through there.

Q. About six hours?

A. Yes, sir.

Q. Is that coming towards Miami or going away?

A. That is going away.

Q. And where did you go from there?

A. We fished over there a day or two, and we come back to Bahia Honda.

Q. How long a trip is that?

A. About the same length of trip as the one going.

Q. About six hours?

A. Yes, sir.

Q. And then where did you go?

A. Started back towards Miami then.

Q. How long a trip is it back to Miami from there?

A. From Bahia Honda? About thirteen or fourteen or fifteen hours.

Q. What fish boats do you supply gas to?

A. To two small Prigg boats; a 200 Sterling petrel. We had too small Prigg boats, and then had this Clip with a 200 Petrel.

Q. It was the Clip that had the 200 engine in her?

A. Yes, sir.

Q. What kind of engines did the two Prigg boats have?

A. One of them had a model A Ford marine, converted; and the other had a Chrysler. The Chrysler run about 90 horse-power,—marine type.

Q. Now how much gasoline did you supply the Clip?

A. How much would we supply her?

Q. How much did you supply her, and when?

A. I don't believe we filled her over twice.

Q. And how much did you give her each time?

A. About 100 gallons, maybe a little more or less.

Q. And the Prigg boat with the Ford motor, how much gasoline did you give to her?

A. Put in 5 gallons every day.

Q. Five gallons every day?

A. Yes.

Q. And you were gone about ten days, is that right?

A. Yes, sir.

Q. Whose boat was that?

A. Belonged to Captain Baker.

Q. The Prigg boat with a Chrysler motor in her, how much gas did you give her?

A. About 10 gallons a day.

Q. And that was for about ten days?

A. Some days maybe 5; I believe you would be safe in saying 10 gallons a day.

Q. Ten gallons would cover it, is that right?

A. Yes, sir.

Q. From your information, how much gas did you use for your generators, a day?

A. Generator? It would run around,—that big generator run around six or seven gallons a day.

Q. And if you used the small one, you would be using a substitute for the big one, I take it?

A. I never used it.

Q. How long a trip is it from Miami to Ft. Lauderdale?

A. Not so long; but up the river, pretty near as long going up the river as it to Ft. Lauderdale.

Q. Is it a two hour trip, or a three hour trip?

A. For that boat? Pretty close to five hours.

Q. Is that all the way up to the yard?

A. Yes, sir.

Q. Some part of that I suppose you would be going at slow speed, is that right?

A. Yes, slow speed, and backing up, all kinds of work, getting up that river.

Q. You spoke about putting some gasoline in Captain Baker's boat at Miami. Have you included that in what you told us about giving her 5 gallons a day?

A. Why I put some in her at the dock.

Q. Put some in at the dock; how much?

A. I filled her up; I don't remember exactly.

Q. How many cans full of gas did you put in her?

A. I don't remember.

Q. His Prigg you said was the one with the Ford motor?

A. Yes, sir.

Q. How much do her tanks hold?

A. I didn't even know that.

Q. Did you put more than two cans in her at Miami?

A. Yes, put more than two cans in her.

Q. Three?

A. I don't know whether I put three or four.

Q. Three or four would cover it, is that right?

A. Yes, sir.

Q. And when I speak of cans, I am speaking of cans like this one here.

A. Yes, sir.

Q. They are 5 gallon cans, aren't they? Isn't that a 5 gallon can?

A. Yes, sir.

Q. You say that when you stopped for lunch at Ft. Lauderdale, you kept the engines running?

A. Yes, sir.

Q. Well you say you were low on gas then?

A. Yes, sir; I told the Captain, when he told me to come up for lunch, I said I better cut them down; but he says he could get aboard to us if she run out.

Q. You were taking a chance on running out of gas?

A. Yes, sir.

Q. Between there and the yard, is that right?

A. Yes, sir.

Q. That would have pretty inconvenient, wouldn't it, to run out of gas between there and the yard?

A. We had a small boat there, to get it with.

Q. I meant to ask you about this Exhibit 17; I think you said that the fixture in the bottom of the primer which led to the small auxiliary, was a copper tube pipe?

A. Yes, sir.

Q. And there was another feed line that was copper tubing, too, wasn't there?

A. The big generator.

Q. The big generator had a copper tube feed line, is that right?

A. Yes, sir.

Q. Did you ever use a hose for filling a boat alongside?

A. When the tank was fairly full.

Q. Did you ever hitch it up to the bilge pump?

A. No, sir.

Q. You said that you could do that?

A. I could have connected it up.

Q. You never did that yourself?

A. No, sir.

Q. There was no—was there any permanent connection between the feed line and the motor?

A. No, sir, there was no connection at all made for it.

Q. What sort of a hose did you use?

A. Through a regular garden hose.

Q. And that would screw right on it?

A. The three-quarters.

Q. —this valve that is marked Carne 125, just like you hitch a garden hose on the faucet at your home, is that right?

A. Yes, sir; rubber washer on it.

Q. I want to ask you about this room in the engineroom; the floor of the room was above the height of the main motors, is that right?—the room in the engineroom, too, that was built into the engineroom?

A. It was pretty near as high as this ceiling.

Q. The floor of the room was above the top of the motor, was it?

A. No, sir.

Q. Below the tops of the motors?

A. Below the base of the motors.

Q. It came all the way down, almost to the floor of the engineroom?

A. Yes, sir.

Q. It was almost as tall as the engineroom?

A. I don't understand just how you mean.

Q. How many steps did you have to go up from the engineroom floor, to get into that room?

A. To the engineer's room?

Q. The engineer's room, yes.

A. It was up pretty near even with the bench level,—the floor was.

Q. How much above the floor of the engineroom was that?

A. A good three and a half foot.

Q. And where was the door?

A. That was in the—right up against the skin of the boat, facing the bow of the boat.

Q. Was it in the forward end of the room?

A. Yes, sir.

Q. And at the side of the boat?

A. Yes, sir.

Q. Was there any other opening between the engineer's room and the engineroom, except the door?

A. That is all, and a window from outboard.

Q. And the window from outboard?

A. Yes, sir.

Q. Was that in the engineer's room?

A. One of them was.

Q. One of them was in the engineer's room, and one of them was outside of the engineer's room?

A. Yes, sir.

Q. The one that was outside of the engineer's room, led right into the engineroom itself?

A. Yes, sir.

Q. The other one just came into the engineer's room, is that right?

A. Yes, sir.

Q. And between the engineer's room and the engine room, there was just a door connecting the two; is that right?

A. Yes, sir.

Q. What was the first year that you worked on the Seminole? In 1933, did you say?

A. It was '30.

Q. 1930?

A. I am pretty sure it was.

Q. What month of the year was it?

A. August.

Q. Where was the Seminole at that time?

A. She was stored at Pilkington's.

Q. And how long did you work on her there?

A. We took her out, went down in her, took her down here to Miami and worked on her that night and had some of the staterooms changed over, and went to the Keys the next day.

Q. You say that was in August, 1930?

A. Yes, sir, I am pretty sure it was '30. It was in August, I know.

Q. Did Mr. Simmon have anything to do with the boat at that time?

A. No, sir, I never hear of him. I don't know.

Q. You never heard of Mr. Simmon, is that right? Never had anything to do with him?

A. No, sir.

Q. I want to get this straight. I hold in my hand the file of Pilkington bills for storage, and it appears a full month's storage was charged on the Seminole in August, 1930, and a full month in September, 1930; a full month in October, 1930.

A. It was in August that we was out.

Q. And for twenty days in November, 1930. Are you sure about your dates?

A. Yes, sir. It was in August.

Q. Mr. Underwood and I have been checking as to the times that she was out from Pilkington's yard, and in 1930 it appears that she didn't leave the yard until November 20; is that right?

Mr. Underwood:

That is according to my notes.

Q. And then she was out until April 20, '31?

Mr. Underwood:

That is right.

Q. And then she wasn't out again during '31, but she was out for a period beginning in March '32, and again a period in August '32. Now could it be August '32 you are talking about?

A. I must have lived two years too fast. It was in August, that is the only time I was on her, in August.

Mr. Underwood:

She wasn't out in August '33; she wasn't out in August '34; according to the bills.

Q. The only month that I can find that she was out in August, was in 1932.

Mr. Underwood:

That is according to my understanding too.

A. Well, that is the only time I was on her, was in August, that first time I was on her.

Q. That is the first time you were on her?

A. Yes, sir.

Q. Now according to my notes she wasn't out in '33, but she was out for a period in April '34. In April '34. Were you on her at that time?

A. She was carried to Palm Beach in '34.

Q. What is that?

A. She was carried up to Palm Beach in '34.

Q. Was that in April?

A. She was out until April, wasn't it?

Q. From sometime in March to sometime in April.

A. I didn't carry her up there that same trip; some fellow engineered it over here, and after they got up here why he left the boat and they come and got me.

Q. Here is a voucher that seems to show that you were paid in April, 1934 for a period from April 2nd to April 21; twenty-one days.

A. Yes, sir.

Q. And did you work during that period of twenty-one days, on the Seminole?

A. Yes, sir.

Q. And that was at Palm Beach?

A. That was Palm Beach.

Q. But somebody else brought her up to Palm Beach from Pilkington's yard that time, is that right?

A. Yes, sir.

Q. Well, was a trip made in her at that time?

A. Just brought her back to Ft. Lauderdale from Palm Beach.

Q. She just lay up there for that period and then was taken back, is that right?

A. Yes; outside of a couple of nights out on the Lake.

Q. Now the next time that she was out was in February, 1935, which was the last time she was out, that you have been telling us about; is that right?

A. Yes, sir.

Q. So that was three times that you worked on the Seminole, is that right?

A. Yes, sir.

Q. And when you left the Seminole, why did you lock the hatch?

A. Well, I generally locked it, I understood they give the keys to Mr. Pilkington; I never saw anything like that.

Q. You understood when you locked it that the keys were going to be given to Captain Pilkington, is that right?

A. Yes. Said to lock it up, and I don't know who give him the keys, I never saw it.

Q. Now was there a car that was expected to take you to Palm Beach from Pilkington's after you got through?

A. No, sir.

Q. You had to go by bus?

A. Mrs. Pilkington took Bryant and myself to Ft. Lauderdale and we caught the bus.

Q. What bus did you get?

A. The seven o'clock bus.

Q. One thing that you said that I didn't understand; you said one of the engines got weak on gas, going up to Ft. Lauderdale.

A. It did, on reverse; when we was making the last turn, it skipped two or three times.

Q. It didn't stop?

A. No, it just acted like a listing of the boat or something might have caused it.

Q. Well, I suppose there may have been water in the gasoline, might'nt it?

A. I never did have any water trouble with it, the time I was on it.

Q. I mean, assuming that it wasn't—that you hadn't had any previous experience with it; I mean, all you say was that the motor did some spitting, is that it?

A. Yes; as we was making the last cove there, right at the dock, you might say, and it cut me down slow, why she worked all right.

Q. Well, water in the gas does cause that spitting sometimes?

A. It does, I know.

Mr. Matteson:

That is all I have.

By Mr. Botts:

Captain, when you were running on this trip down to Matecumbe, and another trip to Mahia Honda and so on, did you run your motors wide open, or were you just running at a cruising speed?

A. Ran very good in deep water; a lot of times slowed down in shallow water, on account of you wouldn't hold

it down dragging a heavy boat like that. Generally ran about 3 to 5.

Q. You mean 3 to 5 revolutions?

A. Yes; 450 was maximum.

Q. And what the gasoline consumption of those two motors, per hour, can you tell us, running at the speed of about 3 to 5?

A. Well, I never have checked it. Right around 35 to 37 gallons an hour, for the generator and the two motors. I never did check the two motors alone; I didn't have no way, much.

Q. Referring, Captain, to Libelants' Exhibit 4, which shows the valve and pipe line coming out through a hole in the bulkhead; that pipe line that shows to be broken off, in that photograph, is the pipe line that went from, I believe you said, the number 1 tank, to the manifold; is that correct?

A. Yes, sir; that is the number 4 tank.

Q. Number 4 tank?

A. It is number 1 tank coming from the port side, of the boat.

Q. Now this would be the number 4 tank, then?

A. Yes, sir.

Mr. Underwood:

He said number 1 tank coming from the port side.

Q. This is the tank that has been referred to as the number 1 tank, that is what I am getting at.

Mr. Underwood:

That is correct, I believe.

Q. Now if that valve was centered in this hole, then the rivets at the bottom of the tank, which appear through the hole, would have been below the level of the hole, would they not?

A. Yes, sir.

Q. Can you tell us how far it was from the line of the face of that bulkhead, back to the tank? Was it directly up against the tank?

A. It was fairly close, about an inch, right through where it come out at the widest place.

Q. Then a person looking through that opening, with the tank in normal position, really couldn't see any of that riveting, could they?

A. You could see just in front,—around the front part.

Q. Just a very few inches?

A. Yes.

Q. Then there was a metal pan of some kind under all of the tanks, as I understand it?

A. Yes.

Q. Do you know whether it was one pan under each tank, or one pan for all of them?

A. Two pans; two tanks set in one pan.

Q. Two tanks for each pan, and that was a metal pan of some sort?

A. Yes.

Q. What kind of a metal did you say it was?

A. 3/16's—

Q. 3/16's iron pan?

A. Yes.

Q. And how high were the edges of that pan—as it was turned over to make a pan shape, do you know?

A. About four to four and a half inches.

Q. This pan, as I understand it, rested on the support, and then inside the pan, as I understand it, there was some wooden—

A. Cushions for them to sit on.

Q. For the tanks to sit on. Well, then, the only point at which you could examine those tanks was through these little holes in the bulkhead, is that right?

A. Yes.

Q. And you couldn't see any part of the bottom of the tanks, could you?

A. No, sir.

Q. And a very few inches along close by the hole, of the riveted side of the tank; is that correct?

A. Just see around the edges.

Q. Now did I understand you correctly, that when the batteries were being charged, that you couldn't get lights in the staterooms or elsewhere in the boat? Is that correct?

A. I misunderstood you.

Q. That is what I wanted to get straight.

A. You could have, whenever you was charging, you could have your lights any where.

Q. Well, then, the lights would burn when the batteries were being charged?

A. Yes, sir.

Q. And it wasn't necessary for this charge and discharge switch to be turned over to the discharge side in order for them to get lights?

A. No; you had to throw it on the charge side, to charge.

Q. Yes, I understand that; but you could get lights throughout the boat whether it was being charged or whether it was thrown over to the discharge side, is that right?

A. Sure.

Q. I thank you. Now you stated, I believe, that you had seen and had occasion to examine the switch arrangement on numerous other boats during the course of your experience; and that these switches were normally knife switches?

A. Yes, sir.

Q. And do you know whether or not these switch boards are normally in the enginerooms or elsewhere in the boat?

A. Most of them is in the engineroom; pretty nice boats, most of them have them.

Q. Now as I understood you, you stated that when this charge and discharge switch,—when it was thrown from the discharge position over towards the charge position, there would normally, or very often at least, be a spark or arc caused?

A. If you say, charging,—your generator was running. If your generator wasn't running, why you would put it over on the charge side, and there wouldn't be no spark.

Q. But if your generator was not running, and the switch was over on the discharge side, and you should open it, then there ordinarily would be a spark?

A. There would be an arc.

Q. I understood you to say that if the connections weren't perfect there might be an arc also when you pulled the switch, but not as light, is that right?

A. Not as heavy.

Q. Not as heavy; There might be an arc caused when you would either close or open the switch, is that right?

A. Yes, sir; you could throw the switch quick, you can't see it, it is so light.

Q. But if you would throw it in slow, it would be more apparent to the eye, is that the idea?

A. Yes, sir.

Q. The same thing would be true in closing this main switch, or opening that, would it not? That there might be an arc caused by—

A. If your switch wasn't on discharge it would be no spark.

Q. Suppose the charge and discharge switch was thrown over to discharge, and then your main switch was opened or closed, then there would be an arc there, would there not?

A. Not if you had the rest of your switches off. There is only one circuit, and that is on your pilot light. It will

make a little arc, but I never noticed much arc. Putting the switch in,—always taking it away, is what does it.

Q. There is a greater arc. However, if the switches were a little out of line, so that one contact reaches a little sooner, there would more likely be an arc than otherwise, would there not?

A. Yes.

Q. Now, Mr. Schlappi, I understood you to say that your normal method of stopping these motors was to turn off these various gasoline valves from the tanks, or manifold, is that right?

A. The feed valve.

Q. The feed valve?

A. On the feed line.

Q. As I understand it, referring to Libelants' Exhibit 17, that the valve here below the—

A. Trap.

Q. —and with the handle broken off, was one of the cut-off valves for your feed lines?

A. Yes, sir.

Q. And you would normally cut those valves off and leave the spark, or ignition on, and let the engine run until the gasoline was exhausted?

A. Yes, sir.

Q. The purpose of that being to do what?

A. On account of water,—the exhaust being under water so deep, and a kickback as you shut your switches, and you have a little carbon and a little heat, a lot of times that would kick back maybe three or four times; it would just pull the water right through your exhaust valve into your cylinder, if she does.

Q. You don't have any particular recollection at this time of how you actually shut them off at this time? You are merely testifying that that was your custom, and from that you meant that you did it the same way on this occasion, is that it?

A. That was my custom all the time.

Q. And you wouldn't say at this time that you have any recollection, one way or the other; you just think you did it, because you always did, is that right?

A. I did it.

Q. All right. Now in referring to this flow from the draw-off,—I believe you call it the draw-off pipe, that you saw when you were pumping out the Seminole, you said that what you saw flowing out was a mixture; is that right?

A. Yes, sir.

Q. Well now, it was a mixture of what?

A. Water.

Q. And gasoline?

A. Water and old oil and stuff. I don't know whether there was any gas in it. It smelled like old, burned oil; or could have been some gas.

Q. I see.

A. Oil or gas will flow to the top of the surface of water.

Q. Now you have told us about four motors in the engineroom; two main motors, the main generator motor and the auxiliary generator motor?

A. Yes, sir.

Q. Was there any other motors aboard the Seminole anywhere?

Mr. Underwood:

You mean electric?

Q. Electric, no; gasoline motors?

A. There was a winch motor.

Q. That was up forward?

A. Yes.

Q. Where did that motor get its gasoline supply?

A. From the tank in the bow of the boat.

Q. How large a tank was it, do you know?

A. Between 5 and 7 gallons.

Q. Just a small tank?

A. Yes, sir.

Q. How was that tank normally filled?

A. Through a three-quarter inch plug.

Q. What I am talking about is: did you normally fill these cans and carry them up there and pour it in there like you fill the fishing boats?

A. Yes, sir.

Q. I believe you said there was a kerosene tank aboard. Where was that kerosene tank?

A. I don't believe they asked me about that.

Q. I thought they asked you about that?

A. He didn't ask me about that but there was a kerosene tank aboard.

Q. Where was that located?

A. Up over the starboard motor, the main motor.

Q. How big a tank was that?

A. 55-gallon.

Q. Do you know whether that was full when you left Miami or not?

A. No, it wasn't full, that was used for cooking.

Q. How much kerosene did it have in there, do you know, when they left?

A. I don't remember.

Q. Did the kerosene from that tank flow by gravity to the galley for use in cooking, or was it drawn off and carried up?

A. You didn't have to carry it. They had a pressure tank back there for that.

Q. You filled up a can and carried it back to the galley as you needed it?

A. Yes, sir.

Q. Now you said that you examined the bilges, I believe, on your way up to Pilkington, or was that after you reached there?

A. I examined the bilges and was cleaning them out going up.

Q. Was there much water in the bilges?

A. No; just where the water pump would throw grease and stuff on them, and hit down there and make greasy spots.

Q. How about water; how much water?

A. There was no water to speak of. You could sit down in the bilges—

Mr. Underwood:

And not get wet?

A. Yes.

Q. Now referring to Libelants' Exhibit 17, this trap and the connections that fasten to it, do I understand that this trap was located above the engineroom floor and underneath this shelf that you mentioned?

A. Yes.

Q. How far was this trap above the engineroom floor?

A. It would be close to 18 inches.

Q. Then the broken off valve attached to it was also above the floor?

A. Yes, sir.

Q. The gasoline from that point, was it connected to the carburetors above or below the floor?

A. Beneath the floor.

Q. It ran down to—

A. Straight through the floor and then back the carburetor.

Q. What distance was it from the trap to the carburetors; how many feet of pipe was carried down underneath the floor that way?

A. Between 10 and 12 feet.

Q. Now that would include the piping for both motors or for just one?

A. Just one.

Q. Then for both motors there would be double that?

A. Yes.

Q. So there was something like 20 feet of the gasoline lines that were underneath the floor boards?

A. Yes.

Q. Now how large did you say this squirt can was?

A. Pretty close to a quart.

Q. You said it would take almost a can full to prime each of the engines?

A. Yes.

Q. When you were getting ready to start you would use one squirt can and then you would fill that can and use it on another?

A. No, I had two of them.

Q. You had two?

A. Yes.

Q. Now about this garden house that you have described as being used to take gasoline out of the tanks into the various fishing boats, you say that was screwed on to the bottom of this draw-off valve?

A. Yes, sir.

Q. You carried this hose out through the window, did you?

A. Yes.

Q. How high or what distance above or below the level of the window sill was the lower part of this draw-off valve or the connection?

A. I would say that draw-off valve was a good two and a half feet below the window sill; more than that maybe.

Q. At any rate, it was far enough below so that when this hose was hooked on there the hose would naturally go down in a curve and up?

A. Yes.

Q. So that from the lower part of the hose to where it went through the window sill was probably as much as three feet?

A. Yes. You couldn't use the hose when it got "half gone".

Q. Now then do you remember how many times you used this garden hose to fill up the boats when you were down on this trip?

A. No, I don't.

Q. When you would finish using the garden hose you would then disconnect the hose until you were ready to use it the next time, I take it?

A. They used it for washing the decks down, too.

Q. They used it for water then?

A. Yes.

Q. How would you drain the gasoline out of that hose when you had been running gasoline overboard?

A. Put it on a water spigot and ran it out.

Q. When you unscrewed it wouldn't there be some gas that drained back into the engineroom?

A. Just from the lower part—you see it ran right back into the can, and you lifted the hose up and run it overboard.

Q. You would either drain it back into the can or run it overboard, so there would be only a small quantity of gasoline that would drain into the engineroom, is that right?

A. Yes.

Mr. Botts:

I think that is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What would you do with that gasoline that ran back—

A. Run it into the can.

Q. What did you do with it then?

A. Taken it up and put in the boat.

Q. Did it go into the bilges?

A. No, sir.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. In this picture which has been marked Exhibit 4-B, do you see the drain line that these valves were attached to?

A. That's the drain pipe all right.

Q. You are satisfied now that this point I am pointing to is the drain pipe?

A. Yes, sir.

Q. I have drawn an arrow pointing to the pipe and at the end I have written "drain pipe"; is that right?

A. Yes.

Q. Do you also notice (when we were speaking of the section of the manifold line 0 that that seems to be in place there?

A. Yes.

Q. Do you recognize that?

A. Yes.

Q. That is it right there, isn't it?

A. Yes.

Q. Is that where the arrow is pointing to?

A. Yes.

Q. I will mark that "section of manifold line".

Mr. Underwood:

All right.

Q. All right, on this other photograph, Exhibit 4-A, do you see the drain line running across there?

A. Yes. This was taken a little closer.

Q. Taken closer to the line?

A. Yes. That looks like the feedline pipe here.

Q. Suppose we mark it on this picture, too.

A. That is it.

Q. This white one here—I will draw an arrow in this margin here—that is the drain line, is it?

A. Yes, sir.

Q. And this other one, which is not quite clear, that is a piece of the manifold line, is it?

A. Yes.

Q. I notice this bill of "Dade Supply" dated April 5, 1935, shows, in addition to the 1540 gallons of gasoline supplied to the Seminole, 83 gallons of gasoline charged to the "Seminole and owners". Do you know what boat that 83 gallons of gasoline was for?

A. It was all charged to the Seminole Boat Company.

Q. It says "charge to Seminole and owners".

A. I don't know, unless that filled the Clip up here at the dock before they left. I didn't have anything to do with filling of the Clip when she left the dock. I never got any little batches of gas line that.

Q. That wasn't for the Seminole?

A. No.

Mr. Underwood:

The voucher simply says "small boats".

Q. Just another thing: you worked on the Iolanthe at times?

A. Yes.

Q. Who employed you when you worked on the Iolanthe; who made the arrangements with you?

A. Mr. Riley?

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. How did you start the motors for the generator; by this same "pressure or compressor arrangement"?

A. Started it with the battery juice.

Q. Did you have a starting motor?

A. Why, on the generator the—the generator had juice through it.

Q. It all acted as a starter?

A. Yes.

Q. In other words, when it was reversing it would act as a starter?

A. Yes, sir.

Q. You said these batteries were 100-cell batteries?

A. Yes.

Q. Was there more than one of them?

A. Yes; there was 100 cells.

Q. Yes but I thought you meant that each battery had 100 cells?

A. No; the batteries connected up is from one cell to the other.

Q. It is a whole series?

A. Yes.

Q. You don't know how many plates in each cell?

A. No, I don't.

Mr. Botts:

That is all.

The Court:

Do you have a question?

Mr. Underwood:

I have about 15 or 20 minutes.

The Court:

I suppose we had better carry it over to tomorrow. We will adjourn until 9:30 tomorrow morning.

(Adjournment taken to 9:30 A. M., May 16, 1939.)

United States District Court Southern District of Florida,
Miami Division.

Charles Coryell, et al, Libelants,
against

George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Deposition taken on behalf of the respondent, John S. Phipps, at the office of Messrs. Burlingham, Veeder, Clark & Hupper, 27 William Street, New York City, April 19, 1939.

Appearances:

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq.,
Messrs. Burlingham, Veeder, Clark & Hupper (Mr.
Underwood) for the respondent, John S. Phipps.

Messrs. Batchelor & Dyer, Messrs. Bigham, Englar,
Jones & Houston, (Mr. Matteson) for the libelants.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

2292 ANTHONY SCHINIGOI, being duly sworn and examined as a witness for the respondent, John S. Phipps, testified as follows:

By Mr. Underwood:

Q. Mr. SchinigoI, where do you live?

A. 113 Constitution Street, Bristol, Rhode Island.

Q. And you came down here from Bristol today to testify in this Seminole matter?

A. Yes.

Q. What is your business?

A. Master mariner in the summertime—mariner in general.

Q. How long have you been going to sea in boats—small boats?

A. In small boats, since 1918.

Q. What has been your regular work in the summertime for the past several years?

A. Master mariner, in Rhode Island.

Q. What did you do—what kind of boats?

A. 45-foot Dawn.

Q. In the wintertime, what has your work been for the past several years?

A. Steward.

Q. And that is in the south?

A. In the south, yes.

Q. Have you ever worked on the Seminole?

A. Yes—1935.

Q. That was the year in which she burned?

A. Yes, sir.

Q. Had you ever worked on her before that year?

A. No, sir.

Q. How did you come to get employed on the Seminole?

A. Through Captain Baker on the Mollie O.

Q. Were you steward on the Mollie O?

A. Yes, sir.

Q. How did you come to go over to the Seminole?

A. Well, Mr. Phipps hired Captain Baker to take charge of the Seminole, and in order to do that he had to lay up the Mollie O, so he took all the crew of his boat on the Seminole.

Q. You say that Mr. Phipps hired Captain Baker. Do you know of your own knowledge who made the arrangements with Captain Baker?

A. Why no.

Q. Where did you join the Seminole?

A. At Miami.

Q. At the Royal Palm Dock?

A. Royal Palm Dock in Miami.

Q. Who all went over to the Seminole from the Mollie O?

A. Captain Baker, Clyde Baker, a deckhand by the name of Sig, and myself.

Q. About how long did you stay on the Seminole that time?

A. I would say about between ten days and two weeks—I think it is nearest to ten days than two weeks.

Q. Did you go on a cruise?

A. Yes, went down the Key, changed places all the time.

Q. What was your job on the Seminole?

A. Steward—cook and steward.

Q. Do you know about how many people there were in the yachting party?

A. Well, to give the exact number it is pretty hard for me, because I wasn't mostly with the party, but I should say it was an average of seven—at different times, between seven and eight people.

Q. Do you remember the names of some of the people who were there?

A. Well, Mr. Phipps.

Q. Which one do you refer to?

A. That is the worst part of it—just call him Phipps down there.

Q. There was at least one Mr. Phipps?

A. There were two Mr. Phipps.

Q. Do you remember the names of any of the others?

A. I believe there was—

Q. Mrs. Guest?

A. Mrs. Guest.

Q. About how many members of the crew were there—
I mean just on the Seminole?

A. Not counting the guides?

Q. Not counting the guides.

A. About six.

Q. Were there any other boats that went along with the Seminole?

A. Yes, there was three or four guide boats.

Q. Did you have anything to do with getting the Seminole ready for that cruise?

A. Yes.

Q. Tell us what you did?

A. Well, we cleaned up all the staterooms, made up the beds, and put out the draperies and stored her with food and supplies.

Q. During that time, did you have occasion to go down into the bilges of the boat at all?

A. Yes, I had to go down once to get some of the blankets that were stored away on the forward part of the boat.

Q. You mean the blankets were stored down in the bilges?

A. Down in the bilges.

Q. What did you find the condition of the bilges to be from your observation at that time?

A. Well, you couldn't ask for no better, just as clean and dry as could be.

Q. Did you smell any odor of any kind down there on that occasion?

A. Not of any kind.

Q. Did you have any work to do in the engineroom of the Seminole at any time?

A. No.

Q. Were you ever in the engineroom?

A. Once.

Q. When was that?

A. After the party left, we were taking the boat from the Key to Miami, I went down for about half an hour in the engineroom.

Q. What was the purpose of that visit?

A. Curiosity.

Q. On that cruise, did you know R. C. Abel?

A. Yes.

Q. Was he on that cruise?

A. Yes.

Q. Do you know what his job was?

A. He was running one of the fish boats.

Q. Where did the party leave the boat?

A. I believe it was lower Maticumbe.

Q. Did any of the crew leave the boat down there too?

A. Well, if you call the butler and the second man from the house the crew—they two left.

Q. When you told me there were about six in the crew, did you include those?

A. No, I didn't include anybody else but the actual crew.

Q. After the party left at lower Maticumbe, where did the Seminole go?

A. The Royal Palm Dock in Miami.

Q. What happened to the crew there—did any part of the crew leave?

A. Well, yes.

Q. Who didn't leave—who stayed on after Miami?

A. The engineer, Captain Baker, one of the sailors and myself.

Q. That makes four?

A. Four.

Q. On the way up from lower Matacumbe to Miami, about how long a trip was that?

A. I would say about twelve hours—ten to twelve hours.

Q. Did you know at that time where the boat was going?

A. Well, we knew we were going to Miami.

Q. Did you know at that time that you were going on further than Miami?

A. No, sir.

Q. What did you do about the staterooms of the boat, if anything, during that time?

A. Well, cleaned them up and laying them up.

Q. Just what did that involve—what did you do?

A. Well, stripped the beds from the soiled linen and folded up the blankets and put them in drawers, covered up the beds again with the bedspreads, and cleaned up the bathrooms, swept the floors.

Q. How much of that work did you get done in the staterooms by the time you got to Miami?

A. The staterooms was all finished.

Q. Do you remember how long you lay over in Miami?

A. It was overnight.

Q. Where did you go from there?

A. Went to Fort Lauderdale—Pilkington Boatyard in Fort Lauderdale.

Q. Were those four men that you have named aboard on that part of the trip?

A. Yes.

Q. That is the captain, the engineer, one sailor and yourself?

A. Yes, sir.

Q. About what time of the day did you arrive at Pilkington Boatyard?

A. It must have been around 2 or 2:30—between 2 and 2:30.

Q. In the afternoon?

A. In the afternoon.

Q. I don't suppose you remember what day it was?

A. No, that is quite hard to remember.

Q. Where did you leave the boat—at Pilkington's?

A. A little dock they had outside of the shed.

Q. When you got alongside, I would like you to tell us what you did in order to leave the boat, before you left her?

A. Well, I went to see that all my work is done, see that it has the proper ventilation, see that the windows are open enough for ventilation, close the venetian shutters so that the sun and rain wouldn't come in.

Q. Did you go into the engineroom at any time on the day you left the boat at the yacht basin?

A. Not exactly—just put my head through the window in the hall to see—well, just to see that everything is all right.

Q. You mean you looked in but you didn't physically go in?

A. No, I just looked in.

Q. You said something about the windows and the ventilators in the staterooms. The only staterooms are on the lower deck—there were no staterooms on the upper deck, were there?

A. Except the captain's room, I think you call that a stateroom.

Q. Just the captain's room?

A. Yes.

Q. Let's talk about the staterooms that were on the lower deck. Tell us just what you did with the windows in the staterooms on the lower deck.

A. Well, after I had them all cleaned up, I pulled the windows two-thirds up, which left an opening about 6 to 8 inches, and I pulled these venetians shutters.

Q. The windows, you say you pulled up—you mean they were the kind of window that dropped down into the bulkhead?

A. Yes.

Q. Into the wall?

A. Yes.

Q. How did you leave those windows?

A. Two-thirds up—one-third open.

Q. You have spoken of a venetian shutter. Describe for us just what you mean by that.

A. It is sort of a slat work at a 45-degree angle, overlapping each other, and permanently made fast to a square frame.

Q. You mean the thing slides up and down as a unit?

A. Yes.

Q. Will the slats change their angle?

A. No.

Q. They are fast?

A. They are fast.

Q. How did you leave those?

A. Way up so that the rain wouldn't come in or the sun, and spoil the furnishings.

Q. Do you remember whether there were any windows in the alleyway that ran alongside of the engineroom?

A. Yes, two.

Q. Did you do anything with those windows?

A. The same thing.

Q. How did you leave those?

A. Two-thirds up, with this shutter in front of them.

Q. How about the windows in the crew's quarters aft of the engineroom?

A. They all was the same way—two-thirds up and these shutters in front.

Q. Did you do all that yourself?

A. All myself.

Q. Who was the last man off the boat, if you remember?

A. Myself.

Q. Tell us what you did the last few minutes before you left the boat.

A. I went through the boat to see everything was like it should be, I took my bag, put my few clothes in it, I locked the door, I walked in the upper deck and handed the key over to the captain and I went ashore.

Q. On that last look around, were you up forward on the lower deck where the passengers' staterooms were?

A. Forward and aft.

Q. On that occasion, did you look at those windows?

A. Every one.

Q. How were they?

A. The window I know I left at two-thirds up, and of course with the shutter on, you could only see the shutter.

Q. Did you look in the engineroom on that occasion?

A. Well, I was just passing by and I looked in. I hooked a window—well, I felt that the window was hooked, between the passageway and the engineroom.

Q. How did you leave that window?

A. Hooked open.

Q. Did you notice whether the window on the other side—the port side of the engineroom—was open or closed or how?

A. There is one thing that I really—I couldn't answer for sure. Maybe at that time I noticed they was open, but being away from my department I didn't pay really any particular attention.

Q. You mean that now you can't tell us for sure whether it was open or shut or how it was?

A. I believe if I see that window closed I would have passed a remark or maybe opened it myself.

Q. When you looked in the engineroom on that last look around, did you smell anything?

A. No, sir.

Q. Was there any odor of gasoline?

A. None whatsoever.

Q. Did you hear anything dripping?

A. No, sir.

Q. Did you see anything dripping?

A. See nothing out of the usual.

Q. Between the last look around that you made at the time you turned the keys over to Captain Baker, was there anybody else in that part of the boat?

A. No, sir, everybody was ashore.

Q. And when you handed the keys to Captain Baker, what did you and he do after that?

A. As far as I remember, we went in the car—the car was waiting for us.

Q. Did either of you go back on the Seminole again?

A. No, sir.

Q. What had become of the engineer and the sailor?

A. They left ahead of us because they were bound to Palm Beach, and their car came before ours.

Q. You mean they had already gone when you left the boat?

A. Well, not very long ahead, I would say maybe ten or fifteen minutes ahead.

Q. But by the time you locked the door and left the Seminole, they had gone?

A. They had gone, yes.

Q. And the door you locked, did I understand you to say that was the after door?

A. That was the after door.

Q. On the lower deck?

A. On the lower deck.

Q. Tell us about these keys that you gave Captain Baker—about how many were there?

A. There were several keys, I could say between four and six—they were tied up on a string with a little paper tag on it, or a stick of wood which I presume had a name on it.

Q. Were they all tied together on one string?

A. They were all tied together on one string.

Q. Did you see what Captain Baker did with those keys?

A. No, I did not notice.

Q. Where did you get your pay for that trip?

A. Captain Baker.

Q. Did you have any dealings with John S. Phipps at all?

A. No.

Q. Or any of the Phippses?

A. No.

Q. Or Mrs. Guest?

A. No.

Cross Examination.

By Mr. Matteson:

Q. Were you paid by Captain Baker by cash or by check, do you remember?

A. By cash.

Q. Were you paid for this particular trip, or were you just paid the wages you got as steward of the Mollie O?

A. No, just for this particular trip.

Q. When did he pay you, if you remember?

A. After we came back from Miami, from Fort Lauderdale.

Q. How long after, do you remember?

A. The following morning.

Q. How long were you on the Seminole altogether?

A. I should say between ten days and two weeks—maybe it was twelve days, something like that—between ten days and two weeks.

Q. Were you paid at the same rate on the Seminole that you were on the Mollie O?

A. Same.

Q. So Captain Baker just paid you ten or fourteen days salary?

A. Yes.

Q. Based on your monthly rate?

A. Yes, based on my monthly rate.

Q. Had you been paid for your time on the Mollie O before that?

A. Yes.

Q. Before you went on the trip on the Seminole?

A. Well, we got paid as a rule at the end of every charter.

Q. Was the Mollie O under charter at the time you were transferred to the Seminole?

A. Yes.

Q. What happened to that charter?

A. I believe it was an opening between charters, and that is the time that Captain Baker went on the Seminole—took the Seminole out.

Q. You say there were two Mr. Phipps that were on this trip?

A. Yes.

Q. How do you recognize the difference between them—is one an older man and one a younger man, or how is it?

A. Mr. Phipps—the one that I believe was the owner of the Seminole—I know him a little more because he chartered the Mollie O the year before, and the other Mr. Phipps seemed a little different, he was quite deaf—and that is the difference between the two.

Q. I think you said it was Mr. Phipps who arranged with Captain Baker to have the crew transferred over onto the Seminole?

A. No, I didn't say that.

Q. Well, you said that Mr. Phipps had arranged with Captain Baker, and then you said that you didn't know that of your own knowledge.

A. I said that I believed that Mr. Phipps hired Captain Baker—not the crew.

Q. Who was it told you that—was that Captain Baker?

A. Yes, talking with me—him and I.

Q. Where was this place where the blankets were stored in the Seminole?

A. It was between the port and starboard staterooms forward—

Q. Can you show on this chart (indicating)?

A. About here is a hatch that you lift up, or was really a hatch that lifts up and a ladder to go down.

Q. That is in this companionway in the forward part of the ship, between the staterooms on the port side and the staterooms on the starboard side, and about in the position where the word "Passage" appears on this blueprint (Exhibit A for identification), is that right?

A. Yes.

Q. You say that there was a hatch that lifted up in the floor of that passageway?

A. Yes, a section of floor came right up.

Q. How big was that?

A. I would say about 3 by 6 feet.

Q. What was down there after you lifted up the section of the hatch?

A. The bilge—a ladder to go down and a bilge.

Q. What do you mean by a bilge?

A. The bottom of the boat.

Q. Were there some boards or some parts partitioned off?

A. Well, no, there was open space—concrete—and you could see the water tanks underneath.

Q. The place where those blankets were—was that on top of the water tanks?

A. No, right on the bottom of the boat.

Q. Where was this concrete that you speak of?

A. Between timbers.

Q. It was concreted in between the timbers?

A. Yes.

Q. Did the concrete cover the timbers?

A. Quite well.

Q. Could you see the top of the timbers through the concrete?

A. Yes, the iron girders.

Q. So in this section under this hatch that lifted up, the bottom was filled in with concrete between the girders?

A. Yes.

Q. And it was on this concrete the blankets were laid?

A. Well, wrapped up in paper.

Q. Wrapped up in a bundle?

A. Yes.

Q. How big was the bundle?

A. Enough to hold six or eight blankets.

Q. How big a bundle would that make?

A. Oh, about 3 cubic feet.

Q. 3 cubic feet would be a foot square and 3 feet long.

A. Then that would be wrong—I am not much good in English mathematics—I would call it a yard in each direction.

Q. You mean a yard long and a yard wide?

A. And a yard high.

Q. A package that size would hold more than six blankets, wouldn't it?

A. I hardly think so.

Q. How many blankets were there in the package?

A. About six or eight blankets—good blankets—good heavy woolen blankets.

Q. When you lifted up the hatchway, were there floor beams that went across the opening?

A. There was something to walk on—the center of the boat as far as the tank—I couldn't say whether it

was wooden boards or part of the keelson—I couldn't say that.

Q. You are speaking now of the space down under the floor?

A. Yes.

Q. You say you could walk in there?

A. Yes—oh yes.

Q. You couldn't stand up in there?

A. Not very well, but by stooping down you could walk.

Q. How high would you say it was from the top of the steel girders at the bottom of the vessel up to the floor?

A. I would say close to 4 feet.

Q. When this hatchway—whatever it was that you lifted up—this section of the floor—when that was in place it rested on the floor beams, I presume.

A. Yes.

Q. And when you lifted it up, the floor beams were still there.

A. Yes, sir, there were floor beams in there.

Q. I suppose there would have to be to hold the section of the floor in place.

A. What I mean, there were two beams dividing the hole in three sections—the opening.

Q. This hole was divided in three parts by the two floor beams that were in the opening?

A. In the opening, that is right.

Q. So that the length of the hole would be three spaces between floor beams?

A. Two or three spaces, I just couldn't—I know there was some obstruction in there because I couldn't get the bundle out, I had to force it through, now whether it was one or two I couldn't quite—I know I had to force the bundle to get it out of there.

Q. In this space down here, there were tanks on each side of it, were there?

A. I believe I only saw the water tanks amidships.

Q. See if I get what you mean: This passageway seems to be just about amidships between the sides of the vessel, is that right?

A. Yes.

Q. Now, you open up the section of this passageway and look down—where do you see the tanks?

A. Aft.

Q. And did the tanks come across the amidship section of the vessel?

A. Yes.

Q. So that this space would be blocked off at the after end by a tank, is that right?

A. Yes.

Q. On each side of the space toward the side of the ship, were there tanks there?

A. I couldn't say because I didn't walk back of that.

Q. Did you go down in the space?

A. I went down to get the blankets.

Q. You never yourself went down in the space?

A. To get the blankets, yes.

Q. You needed a lot more than six or eight blankets for the boat, didn't you?

A. Yes, but a lot came from the house. That was originally the blankets that was part of the equipment of the boat.

Q. You say some blankets were brought from the house?

A. Yes.

Q. What house was that?

A. From Palm Beach. The butler brought them—which house he took them from I don't know—the butler brought them on board.

Q. Weren't some of the blankets stored in the state-rooms?

A. Yes, in the drawers. If I remember right, the blankets I took out of the bilges we used for the crew;

the ones in the drawers were used for the staterooms; and then the extra blankets came from the house or some house, were used also in the guests' staterooms.

Q. What was the name of the butler?

A. I can't remember, we used to call him by his first name.

Q. What was that first name, do you remember?

A. No, sir, I couldn't remember. Maybe a couple of months after I could remember.

Q. You can't remember it now?

A. No, sir, I never saw him since.

Q. How did you know there were blankets in this place?

A. I was told.

Q. Who told you?

A. The captain.

Q. What was the name of the sailor that went up to Fort Lauderdale with you—was that Bryant or was it Sig?

A. Bryant.

Q. You spoke of being a master mariner. Do you hold a master's license of any kind?

A. Operator's license.

Q. Motorboat operator's license.

A. Yes.

Q. You don't hold any license from the Steamboat Inspection Service?

A. No.

Q. When you say you had experience as a mariner, you mean in boats of the type of this 45-foot Dawn cruiser you speak of?

A. I started in 1907, ocean liners.

Q. What sort of work did you do on ocean liners?

A. A little bit of everything, mariner, fireman and coal passer, steward, cook, messboy.

Q. What do you mean by mariner?

A. Anybody that goes to sea.

Q. You mean a sailor?

A. Well no, anybody that goes to sea—the captain is a mariner and the engineer is a mariner.

Q. And the coal passer?

A. The coal passer is a mariner—that covers the whole branch.

Q. When you said you worked on ocean-going vessels as a mariner, what did you mean by that?

A. Well, that would cover all the departments.

Q. When you said mariner, you just meant those other capacities that you named specifically, is that right—coal passer, fireman, steward?

A. Instead of covering the whole individually, I just called it mariner.

Q. Did you ever work as a sailor?

A. Yes.

Q. Never as an officer?

A. No.

Q. You said Abel was on one of these fishing boats?

A. Yes.

Q. Was that the Clip?

A. I believe it was, although it is pretty hard for me to remember the name, but there were three or four, every one had a different name, but I believe it was the Clip that was the biggest.

Q. When you stopped at Miami on the way to Fort Lauderdale, did you take on any gas there, do you know?

A. No.

Q. You say you don't know when you got to Miami that you were going to Fort Lauderdale right away?

A. No, we didn't know then.

Q. When did you find that out?

A. The same afternoon.

Q. How did you find that out?

A. Through the captain's orders.

Q. Where is the galley on the Seminole?

A. A little aft of amidships.

Q. That is the room on the starboard side in the after section of the ship on the lower deck?

A. Yes.

Q. And is marked "Galley" on this blueprint (Exhibit A for identification), is that right?

A. Yes.

Q. What kind of a stove did you have?

A. It was an iron stove burning kerosene.

Q. Using kerosene for fuel?

A. Yes.

Q. Did you cook the meals for the crew and for the passengers as well?

A. Yes.

Q. Where were the passengers' meals served?

A. Up in the diningroom.

Q. That is on the after part of the deck?

A. After part of the deck.

Q. The room that is marked "Saloon" on this blueprint?

A. "Saloon", that is right—"Dining Saloon".

Q. How were the dishes transferred from the galley up to the saloon?

A. There is a dumbwaiter here in the crew's pantry, carry up stores to the dining room pantry.

Q. That is, this dumbwaiter is in the pantry which is right opposite the galley on the lower deck?

A. Yes.

Q. You were telling us about the way you left the windows, and you said you left them about a third open?

A. Yes.

Q. How tall are those windows?

A. I believe they are about 24 or 28—maybe 30 inches.

Q. You haven't any way of estimating except by your rough guess?

A. Rough guess, yes.

Q. Whatever their height was, they were about a third open?

A. About a third open, they were open, I would say, 6 or 8 inches—mostly 8 inches, I would say.

Q. If they were 24 inches high, 8 inches would be a third?

A. Yes.

Q. If they were 30 inches high, 10 inches would be a third, is that right?

A. Well, it is quite hard, when you close a window, to say whether it was 8 or 10 inches. I don't think any of the windows would be equally open anyhow, maybe more or less.

Q. Your best estimate is they were open about a third?

A. About a third open, that is what I do on every boat when I lay it up.

Q. The door that you locked, I think you said, was this one at the after end of the house on the lower deck?

A. Yes, that is the last door I locked.

Q. Did you lock any other doors?

A. The doors in the deckhouse—three of them.

Mr. Underwood:

Indicating the social hall as it appears on the upper deck of Respondents' Exhibit A for identification.

Q. Did the same key fit all those doors?

A. No, those has Yale locks.

Q. That is the doors in the social hall?

A. In the social hall and the captain's room.

Q. Have Yale locks?

A. Yes, Yale locks. The door here has a regular house key.

Q. Old-fashioned house key?

A. Yes.

Mr. Underwood:

Indicating the after door on the lower deck.

Q. Did the same Yale key fit all three doors in the social room and the captain's cabin?

A. I couldn't say, because them Yale locks you only snap the lock and it is closed.

Q. You didn't have to use a key for that at all?

A. No, sir.

Q. So the only key you had any use for was the key to the after door on the main deck?

A. The after door on the main deck—on the lower deck.

Q. Did you have a key to the doors in the social hall, do you know?

A. Well, there was a bunch of keys when I locked that door, I guess there were four or five or six keys.

Q. You don't know whether one of them was the key for those doors or not?

A. I presume they was.

Q. But you don't know?

A. No, I don't know.

Q. You didn't try it?

A. No.

Q. Where did you get the keys?

A. There were some hooks on the inside of this lower deck door where the key was hanging.

Q. A board with a lot of hooks on it?

A. A board with a lot of hooks on it?

Q. A separate hook for each key?

A. No, they all was in one bunch, and the other hooks were used for different things, maybe a towel or whisk-broom or something like that.

Q. What time did you leave Fort Lauderdale that night, do you know?

A. I believe between 4:30 and 5.

Q. Who drove you to Miami that night?

A. I don't know, the Biscayne office sent a car for us.

Q. Was there a driver with the car?

A. Yes.

Q. You don't know who that was?

A. I don't know who that was.

Q. Have you worked for Mr. Phipps or any of his companies since this time?

A. No, sir. You mean since that time?

Q. Since that time.

A. No, sir.

Q. Whom are you working for now?

A. At present?

Q. Yes.

A. Nobody. I am starting tomorrow for Mr. Hilton—Vincent K. Hilton.

Q. Is he in Bristol?

A. No, he is in Clearwater Beach, Florida.

Q. Working up here?

A. Starting to fit out his yacht.

Q. What is the name of his yacht?

A. Teddy III.

Q. Where is she?

A. At Bristol, Rhode Island.

Q. When was it that anyone got in touch with you first to ask you about what you remembered about laying up the Seminole—how long ago was that?

A. I think it was a couple of months. I read in the paper about an explosion—Captain Baker wrote me a letter here that on my way south I stop in the office and see Mr. Reynolds. That is the first time I been interviewed.

Q. Did you make a statement at that time?

A. Well, it was practically the same questions I been asked now.

Q. Were you asked about the keys to the boat at that time?

A. Yes, I am quite sure.

Q. Were you asked about the windows of the engine-room at that time?

A. Yes.

Q. And was a memorandum made of what you said at that time?

A. Yes.

Q. You are quite sure you were asked about the keys and the engineroom at that time?

A. I am quite sure.

Q. You didn't have any responsibility for the engine-room, did you?

A. None at all.

Q. Anything that you observed with respect to the engineroom was just curiosity?

A. Just curiosity, yes.

Q. The engineer left before you did?

A. Yes.

Q. And it was his job to see that the engineroom was all right?

A. That is right.

Q. How did you happen to notice this window in the alleyway when you left the ship?

A. Because we always try to keep that window open to give ventilation in the engineroom, and at the time we were running she used to swing and bang, and I happened to reach my hand to see that she don't blow back, shut off.

Q. Where was this hook that you spoke of?

A. Back of the partition in the engineroom.

Q. That was a hook on the inside of the window?

A. Yes.

Q. How did this window open and close—did it go up and down or swing on hinges?

A. On hinges.

Q. Where were the hinges?

A. On the forward part of the frame.

Q. They were at the side of the window then?

A. At the side, yes.

Q. None on top?

A. No.

Q. And you say the window was open and was hooked to something?

A. There is a regular iron hook to hold it.

Q. Then as the window opened it could swing inwards and in a forward direction, is that right?

A. That is right.

Q. And when it was fastened in the open position, in what position would it be—I mean what direction would the window be pointed?

A. Forward.

Q. Be pointed forward?

A. Yes.

Q. Then as I get it from what you say, this window in its ordinary position has the hinges on the forward side, and from there the window goes in an aft direction?

A. The window opens to the right.

Q. When it opens it goes all the way around to 180 degrees?

A. Yes.

Q. And fastens to the side?

A. Fastens to the side.

Q. So this hook that you speak of would be the width of the window away from the opening that the window ordinarily fitted in, wouldn't it?

A. Please repeat.

Q. I say, when this window opened and swung all the way around so it was against the side, then this hook would be on the forward end of the window?

A. Not necessarily.

Q. I am asking you.

A. No, it was amidships, you can reach it from the inside, from the companionway you can reach in and hook it.

Q. How far forward was it of the window opening?

A. About a foot.

Q. How wide was that window?

A. Around 3 feet.

Q. About 3 feet wide?

A. About 3 feet wide.

Q. How was the hook—on the top or on the bottom?

A. On the bottom.

Q. As you stood in the pasageway, how high was this window above the deck—how high would it come on you?

A. Well, it would come about this (indicating).

Q. About the height of your arm when you stand with your arms folded?

A. Yes.

Q. About 4 feet?

A. Roughly 4 feet, yes.

Q. Did you know when Schlapei left, the engineer?

A. I didn't see him leaving—we say good-bye on the boat, when he left the boat.

Q. Where was he the last time you saw him?

A. Maybe fifteen minutes before I left the boat.

Q. Where was he at that time?

A. Going through the after deck from his—taking his clothes out of the crew's quarters.

Q. Have you any definite recollection of how many keys there were in that bunch that you handed to the captain?

A. I couldn't say for sure just how many—there were several keys.

Q. And the only key that you know what it was the key to was the key to the after door, is that right?

A. Yes.

Q. They were fastened together with a string?

A. With a string.

Re-Direct Examination.

By Mr. Underwood:

Q. Is there any connection or relation between Mr. Phipps and Mr. Hilton?

A. No, sir.

Q. I am not clear about your answers to Mr. Matteson's question about whether you took any gasoline at Miami on your way north to Pilkington's. Did you say you did not take any gasoline or that you don't know whether you took any gasoline or not?

A. Well, of course I was there all the time and I didn't see any gasoline coming on board.

Q. So that you mean to say—

A. They could have come without my knowledge.

Q. But so far as you know, none was taken?

A. None was taken.

Tuesday, May. 16, 1939, 8:30 o'clock A. M.

(Hearing resumed pursuant to adjournment of the previous day.)

2324 MR. ROLAND A. SCHLAPPI, resumed the witness stand and further testified, upon:

Re-Direct Examination.

By Mr. Underwood:

Q. Rollie, you told us yesterday about a leak in the filling line which was repaired. I would like to know just where that leak was. It was in a union, I understand.

A. Yes, ground seat union.

Q. Now there are several places that leaks might be in the valve; it might be up in the ground seat, or it might be in the threads. I would like to know just which one of those several places was leaking.

A. It was in the seat itself.

Q. Now approximately what was the distance from the manifold line down to where the feed lines passed through the floor of the engineroom?

A. It was between eighteen inches and two feet.

Q. As I understand it, in that space there was a trap and a valve.

A. Yes, sir.

Q. How did the feed lines fit as they passed through the floor board?

A. They went down through a hole.

Q. How did they fit in the hole?

A. Pretty snug.

Q. And from that point there was an L where the leads met aft of the motors, is that right?

A. Yes, sir.

Q. How were those feed lines arranged, from that L back to the place where they turned up again to go to the carburetor? Did they lay on anything or up against something, or how?

A. Well, they laid on the members,—wooden members.

Q. The beams?

A. Yes, sir.

Q. How were they secured there?

A. Why, I didn't notice that.

Q. Do you have any recollection as to that?

A. No, sir.

Q. Yesterday, your attention was called to this voucher 8032, which is part of Exhibit 3-U. I would like you to tell me if you can, which of those six items covers

your wages for the time you were on the Seminole on the cruise and took her up to Pilkington's to lay her up.

A. I think that thirty-one days come in there; twenty-two days repair work on her.

Q. What was your rate of pay when you were repairing the boat, as you were in February and March at the Royal Palm Dock?

A. \$8.00 a day—

Q. And subsistence?

A. Yes, sir.

Q. What was your rate of pay as an engineer when you were operating the boat on a cruise and up to Ft. Lauderdale?

A. \$5.00.

Q. I am not quite clear whether your testimony yesterday brought out how you left the two stop valves in the feed lines that were below the carburetors when you left the boat at Pilkington's. How were those valves left?

A. They was closed.

Q. And how far were they closed?

A. Tight as you could shut them.

Q. Something was said yesterday about it being possible to turn the electric lights while the batteries were being charged.

A. Yes, sir.

Q. Will you tell me where that electricity came from for the lighting circuits when the charging and discharging switch was closed on the charging side?

A. Well, it went right through the line, through the batteries, the feed lines too.

Q. Went to both?

A. Yes, sir.

Q. Now if your charging and discharging switch was closed on the charging side, could you get any current on the field switches with the generator idle?

A. No, sir.

Q. That generator would have to be running?

A. Yes, sir.

Q. Now you have told us something about an arc in the operation of the knife switches. I would like you to tell us a little more about that. Just what sort of thing was it, that it looked like, how big was it, what did it do?

A. Well, I say that you get a fairly good sized arc when you throwed the switch, pulled it.

Q. When you opened it?

A. Opened it; and when you closed it, very little.

Q. What did that very little arc look like? How big was it?

A. Why you could hardly notice it in the daytime.

Q. Can you compare it in size with some object?

A. Why, I don't know just how to go about it. Just like a flash of a pinhead or something; no flash to it, either.

Q. Well, how long, in time, would that last?

A. Just the time it touched, is all.

Q. When that occurred, what became of this little thing that you saw?

A. It just happened right on the switch.

Q. Did it go anywhere else?

A. No; no break to it or nothing, just an arc.

Q. Was there any spark that fell, that you ever saw?

A. No, sir.

Q. What was the condition of the knives and the points on that switchboard when you laid her up, at Lauderdale?

A. They was all in good shape.

Q. Was there any corrosion on the points or the knives?

A. No, sir.

Q. You told us yesterday about the gasoline tank for the windlass and motor. Did you ever observe any leak there?

A. No, sir.

Q. What kind of a tank was that?

A. It was an ordinary galvanized tank, riveted tank.

Q. You mean round, or circular?

A. Well, round cylinder.

Q. Same shape as the main tanks?

A. Yes, sir.

Q. When did you last see that?

A. Why, I noticed it when we filled the tanks.

Q. Do you remember when that was?

A. I don't remember whether I filled it on the trip or not. It was only used a little bit.

Q. How close did you come to that tank when you were in the forward bilges, getting ready to leave here, to Pilkington's?

A. I wasn't in there.

Q. I didn't hear you.

A. I wasn't in close to it.

Q. Is that in a separate compartment?

A. Yes, sir.

Q. What sort of a separation is there between that and the compartment where the water tanks are?

A. Well, there is a regular steel bulkhead right—it is about seven feet long, seven feet back of the bow, cut off, and it is sitting in this compartment.

Q. Do you know whether that is a water tight bulkhead?

A. No, I don't.

Q. Do you remember how far down it went?

A. It went to the bilge of the boat, all right.

Q. Did it stop at the frames or did it go down to the skin of the ship,—or do you remember?

A. I never noticed.

Q. Now this kerosene tank in the engineroom, what was the arrangement for getting kerosene out of that tank?

A. There was two draw valves the same as that, only a little larger I would say; I think it was three-quarter.

Q. How many valves did you have to open to get kerosene out?

A. Two.

Q. Did you observe any leak there?

A. No, sir.

Q. Did you smell any kerosene in the engineroom?

A. No, sir.

Q. Now you told us yesterday about two squirt cans that you used for priming the motors. How did you leave the cans?

A. Well, empty, outside of cleaning them out.

Q. When did you last use them?

A. Priming here at the dock the morning we left to go to Ft. Lauderdale.

Q. Did you refill them after that?

A. No, sir, never shut the motors.

Q. Where were those two squirt cans left?

A. They were sitting in a brass tray on the top of the desk.

Q. Were they left there?

A. Yes, sir.

Q. You have been on a good many gasoline driven boat, haven't you?

A. Yes, sir.

Q. In your experience, is there any such thing as a special type of gasoline valve?

A. Well, I haven't noticed any special, on the boats I have been on. A good seat valve is all I ever noticed.

Q. In your experience, is there any particular angle that is better than any other for the contact between the plug and the seat?

A. Why, I have always liked a 45 degree angle with a pretty good face to it.

Q. What is your opinion as to the utility or the value of a needle type plug seat and seat valve?

A. Well, it wedges, and you will eventually cut a ring on your valve itself.

Q. What happens when you do that?

A. Well, they leak, it keeps cutting in all the time.

Q. Have you had that experience on a valve,—a needle valve?

A. With a needle valve on carburetors, I have had it.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Schlappi, this tank in the forward compartment was used to operate the anchor windlass, was it?

A. Yes, sir.

Q. And you used that fuel supply every time you raised your anchors, is that right?

A. Yes, sir.

Q. I understood you to say that you did anchor several times on this trip.

A. Yes.

Q. In April '35. So it was used on that trip, wasn't it?

A. Yes.

Q. You say you don't recall whether you had occasion to fill it on that trip or not?

A. It only used very little gas, only used a few minutes to hyst anchor.

Q. But you don't recall whether you actually filled it on that trip or not?

A. Well, I didn't fill it on that trip. I filled it—I don't recall whether I filled it on the trip or here, but usually we get things ready before we leave.

Q. You think you did fill it either before you left here—

A. Before.

Q. —or on the trip. Before you went on the trip, that would be at Miami just prior to April 5, 1935?

A. Yes.

Q. With regard to these squirt cans, I take it you used them at Miami on the morning of the day you started for Ft. Lauderdale?

A. Yes, sir.

Q. Did you use all of the gasoline that was in them at that time?

A. Used practically all of it; until it squirts air.

Q. Then you put them on the tray?

A. Yes, sir.

Q. And is that the last thing that you did with them?

A. Yes, sir.

Q. There is one object in the engineroom that hasn't been identified, Mr. Schlappi, and I would like to know what it is. It shows in this picture that I show you here. I call your attention to this object on the after bulkhead of the engineroom, apparently aft of the port engine. You see what I am referring to?

A. Yes.

Q. Can you tell us what that is? Here is the magnifier if you want it.

A. That is the rheostat, for lowering and raising the voltage.

Q. Well, was that on the switchboard then, or to one side of it?

A. No, sir, that was to one side, to the port side of it; or the right hand side looking at it.

Q. Then yesterday in making up this diagram of the switchboard, Libelants' Exhibit 110, you put a circle on the switchboard, you put a question mark after it at the time?

A. Yes.

Q. Indicating, rheostat?

A. Yes.

Q. Now do I understand that the rheostat was not on the switchboard, but was at one side of it?

A. Yes, there was one on that, that was used for sensitive adjustments.

Q. The one on the switchboard was used for sensitive adjustments, is that it?

A. Yes, sir.

Q. And then you had a larger one at one side of the switchboard, is that it?

A. Yes, it fit off, that was separate from the switchboard.

Q. Then we will call this one the big rheostat, is that right?

A. Yes.

Q. I will just put an arrow on this picture pointing to it, and at the top I will write, big rheostat.

Mr. Matteson:

I offer that as Libelants' Exhibit 113. This is a photograph that was taken in late '38 or early '39.

Mr. Underwood:

I have no objection to it, so far as structural matters are concerned that wouldn't be changed by the lapse of time.

(The said photograph was admitted in evidence and marked Libelants' Exhibit 113.)

Mr. Matteson:

That is all.

Mr. Botts:

No questions.

Re-Direct Examination.

By Mr. Underwood:

Q. Just one thing I am not clear about, Rollie. Where was this windlass engine with reference to the deck? Was it above or below the deck?

A. It was above the deck.

Q. And where was the gasoline tank?

A. It was below the deck, in the hatch that you went into this compartment, right in there.

Q. How did you feed it?

A. It was fed by an auto pulse

(Thereupon the witness was excused and released subject to call.)

2335 MR. JOHN S. PHIPPS, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name?

A. John Shaffer Phipps, J. S. Phipps I am known by.

Q. Where do you live?

A. I live in Palm Beach, Florida.

Q. What is your business, Mr. Phipps?

A. Well, I have retired from active business; I have no more to add to that.

Q. When did you first acquire any interest in the Seminole?

A. In 1915.

Q. From whom?

A. From my brother, H. C. Phipps.

Q. And how much of an interest did you acquire at that time?

A. I bought a half interest.

Q. Now from that time on, did you ever buy any more than a half interest in the Seminole?

A. No.

Q. Now there came a time when the Seminole Boat Company, a corporation, was organized. What did you do with your half interest in the Seminole at that time?

A. I exchanged—when the Seminole Boat Company was organized?

Q. When it was organized?

A. That is right. I exchanged my half interest in the Seminole for a half of the common stock—or half of the stock of the Seminole Boat Company.

Q. Have you ever owned any more than half of the common stock of the Seminole Boat Company?

A. No.

Q. Now prior to the formation of the corporation, how were the expenses of the maintenance and upkeep,—the overhead expenses of the Seminole, divided between you and your brother?

A. He paid half and I paid half; the maintenance and upkeep?

Q. That is right.

A. He paid half and I paid half.

Q. How were the expenses of the operation of the boat, when you took her out on a trip, borne?

A. If I took her out a trip for myself, then I paid all the expenses. If he took her out on a trip why he paid. If we went together, I suppose they were divided, I don't remember that.

Q. Now after the formation of the corporation, how were the expenses of maintenance and upkeep paid for and arranged?

A. They were paid by the Seminole Boat Company.

Q. And how were the expenses of operations borne?

A. The expenses of the operation were the same way, they were borne by the charter party. If I were using the boat I would pay for it; if my brother were using it he would pay for it.

Q. Now, Mr. Phipps, have you had any education or training as an engineer?

A. None at all.

Q. Or as an electrician?

A. No.

Q. What do you know about gasoline motors?

A. I don't know anything. Well, I have had an automobile.

Q. Do you know what is under the hood of your automobile?

A. I don't, no.

Q. Have you ever operated the motor of a motor boat?

A. Operated it. I have held the tiller, but I never started it.

Q. Have you ever removed—

A. I don't think I have held the tiller. I have been in a motor boat.

Q. Have you ever removed or installed a spark plug?

A. Of course I have held the tiller of an outboard,—no, I never changed a spark plug.

Q. Have you ever taken a motor down and put it together again?

A. No.

Q. Have you ever had any part in installing a gasoline feed line?

A. No.

Q. Or gasoline tank?

A. Installing or stalling?

Q. Installing.

A. No.

Q. Do you know anything about gasoline tanks or feed lines?

A. No.

Q. Prior to the formation of the corporation, where did you get your information as to what work should be done on the Seminole?

A. From the Master of the boat.

Q. And following the formation of the corporation, were you consulted as to any work that should be done on the Seminole?

A. I don't remember any, no.

Q. Now I would like to ask you about the origin of this corporation; how did that come about?

A. Well, Hawkins, who represented the family interest in Miami, Roy Hawkins, said that Baker thought he could make money if we chartered the Seminole and if he had charge of it. He had a boat of his own, but the Seminole was a larger and better boat, and he thought he could make some money for us if we incorporated the Seminole and used it for charter parties.

Q. And with whom did you confer about that?

A. I conferred with my brother.

Q. Was any decision reached?

A. I conferred with my brother and he thought it was a good idea, and we formed the corporation.

Q. What was your purpose in forming the corporation?

A. My purpose was to try to get some money. Baker thought he could charter the boat for about six months of the year. Prior to that time we used it very little, I don't know how much, without refreshing my memory; but the boat was idle a great part of the time; and Baker thought he could use it a great part of the time and could get charter parties for the boat.

Q. Did you have any understanding at that time as to the use of the Seminole by the stockholders?

A. Well, that was what we understood; Baker said he would charter the boat, and we more or less agreed that while he had the boat chartered, of course we wouldn't attempt to use it. If there were no charter, and no charter was contemplated, then we could use it.

Q. And by "we" whom do you mean?

A. I mean my brother or myself.

Q. Now following the formation of the corporation did you have anything to do with making decisions about work that was to be done on the Seminole of any kind?

A. I was never asked for any decisions.

Q. Now coming down to the year, 1935, do you recall considering the possible sale of the Seminole?

A. Yes.

Q. How did that come about and what was done?

A. Well, Roy thought it would be a good idea to sell the Seminole; he had an offer for it, an offer of \$5,000.00. He said,—I asked how much he could get for it; he said "I can get \$5,000.00"; and that is all he could get. So I talked to my brother, we met together, and he said he thought it was a good idea, that he would sell his share. I wanted to talk to my wife before I decided, so I went home and discussed it,—and with my sister Mrs. Frederick Guest. Then Mrs. Guest said "If you will keep your share,—your share of the Seminole, your half of the Seminole, I will buy Hal's half."

Q. Hal is your brother?

A. Hal is my brother; H. C. Phipps. And I said "Well, if you care to go on, I will keep my share and you take Hal's or buy Hal's"; and we so notified Roy Hawkins and he refused the sale.

Q. Now do you recall the purchase of the Prigg boat early in 1935?

A. Yes.

Q. How did that come about?

A. I don't know whether we had—what do you call it?

Q. Tender?

A. I don't know whether we had a tender; if we had, it wasn't any good. Anyhow, Roy said he knew of a Prigg boat that would make a good tender for the Seminole; and he showed it to me. It looked like a nice boat, the price was reasonable, and I said "Well, Roy, if you buy the boat, you will either buy it for the Seminole; if Mrs. Guest wants it; if not, I will take it for myself." That's how the boat was bought. I then told my sister about it and she asked if it was necessary for the Seminole. I said it would be very good. She says, "Well, then, she would like to have it bought for the Seminole—the Prigg boat.

Q. Did you have any conversation with Mr. Hawkins about that?

A. Oh yes.

Q. Give him any instructions?

A. Oh yes. Of course I notified Roy then that it belonged to the Seminole and not to me personally.

Q. What did you tell him as to who would authorize its purchase?

A. Well, I suppose it was charged to the Seminole Boat Company.

Q. As to who authorized the purchase.

A. Oh, I told him that Mrs. Guest and I had decided to have the Prigg boat for the Seminole.

Q. Do you recall being on a cruise on the Seminole in April 1935?

A. Yes,—in April?

Q. Yes.

A. Yes.

Q. What was the original arrangement for that cruise, and how did it come about?

A. Well, I think originally I was going out with Starke and with my brother.

Q. Who all was going on that cruise?

A. I think, Roy Hawkins, and Lehmann, my brother Hal, my brother Howard, and myself. I discussed that with the family, they were very sorry, they were going on a fishing trip. So I says "We will see if we get a charter on the Seminole, and go off on the Seminole". And I told Mrs. Guest about it, I said, "The Seminole is not chartered, I would like you to go with me, but I want it to be my party."

Q. Who was on the Seminole?

A. I told you who were on Starke's boat.

Q. What did you do then about the operating expenses on that cruise?

A. I paid them all.

Q. I show you, Mr. Phipps, a memorandum; do you recognize that? |

A. Well, those are my initials, my o. k. on it.

Q. O. K. J. S. P. opposite the figure 1384.47, are your initials?

A. Those are my initials.

Q. You wrote the o. k.?

A. Yes.

Q. Do you happen to recognize the handwriting that begins with the word, divided?

A. Well, I would say that is my handwriting.

Q. What does it say?

A. This charter of Yacht Norman for seven days, Captain Starke, divided three weeks; H. C. P., Howard Phipps and J. S. P., \$1220.

Q. The ink part of that—

A. I put that in.

Q. You wrote that?

A. Yes.

Q. Down here in pencil there appears, Mr. H. C. P. says three ways.

A. That is Ralph Patterson.

Q. R. A. Patterson, you recognize that handwriting and those initials?

A. Yes, that is one of the secretaries in the office.

Q. How soon after the cruise in April 1935 was this presented to you for your o. k. and o. k'd by you?

A. I don't know, but I should think very shortly. Isn't it dated?

Q. Well, the instrument does not appear to bear any date, except it bears—

A. It says April 30.

Q. Do you have any recollection as to just when you o. k'd that?

A. No.

Mr. Underwood:

I offer this in evidence.

(Without objection said paper was admitted in evidence and marked Respondents' Exhibit 4-K.)

Q. How much of that \$1384.47 did you pay Mr. Phipps?

A. Oh, I paid it all.

Q. And how much of the \$1220. did you pay?

A. I paid a third.

(Discussion had between counsel.)

Q. Are these expenses, Mr. Phipps, the total, the 1300 odd dollar figure, the expenses of the Seminole on that trip?

A. They are.

Q. When that trip was in prospect, what if anything, Mr. Phipps, did you have to do with the engagement of Captain Baker?

A. I had nothing to do with it, except Roy Hawkins, who was acting for the boat company, engaged the crew

and asked me if I liked Captain Baker; and I had him before, I said "Yes, I like him very much."

Q. Did you have anything to do with fixing the rate of pay at that time?

A. No, sir, nothing.

Q. Did you have anything to do with the selection of the engineer?

A. No.

Q. Or any member of the crew?

A. Nobody, not even the cook.

Q. Did you issue any instructions to anybody during that cruise about the maintenance or upkeep of the boat?

A. No, sir.

Q. At the end of the cruise did you give any instructions as to what was to be done with the Seminole when the party left?

A. No. We all picked up and left. You mean, me, when you say the party?

Q. Yes, you and your guests. Now there has been some testimony in this case, Mr. Phipps, about payments that have been made to John Thomas, who was on the Seminole when the fire began. When did you first learn of those, and what have you had to do with them?

A. Well, I knew, but it must have been sometime later, I don't know how long later, that John Thomas' hospital bills had been paid, by somebody that was given some money; the Seminole Boat Company had taken care of that end of it.

Q. Were you consulted about that before the payment began?

A. No, I have never been consulted. They told me yesterday they have been continued.

Q. What is your best recollection as to when you were first consulted with reference to those payments, how long after the fire?

A. Oh, I don't know, at least a month I suppose, but I don't know. I wasn't consulted, but I must have been told later; it must have been a month or more, longer.

Q. There has also been some testimony in this case about payments to the widow of Captain Abel. Do you remember whether you were consulted about that before that payment was made?

A. Yes, I was.

Q. Did you know John Thomas, the man who was with Abel?

A. No, I never had seen him, at least I don't know to my recollection that I have ever seen him. I wouldn't know him if he came in the room.

Q. Did you have anything to do with employing him for any work?

A. Not that I remember.

Q. You knew Abel, did you not?

A. Very well.

Q. In whose employ was Abel during the time preceding the fire?

A. Abel was in my employ from time to time, taking care of the Yacht Iolanthe and the fishing boat the Clip; but from time to time he would be used by other members of the family, and by the other corporations; and I gave Roy permission to use him, and he did use him; and when he was so used he was paid by whoever was using him.

Q. Where were you when this fire occurred on the 24th of June, 1935?

A. I was in New York.

Q. Did you at that time have any plans for coming to Florida at any time in the near future?

A. No.

Q. Were you planning a fishing trip at that time?

A. Oh, I was planning to go to Grand Cascapedia in Canada. Then I planned to go fishing, as I usually go, salmon fishing, and I went on the 25th.

Q. You left New York on the 25th?

A. Yes.

Q. For Canada?

A. For Canada, yes.

Q. Now in salmon fishing in Canada, do you use^e glass bottom buckets or any of the kind of fishing gear that you use in Florida waters?

A. No.

Q. Do you recall, since the formation of the corporation, having presented to you for approval, and bills in respect to the Seminole for maintenance or upkeep or anything of that sort?

A. No. What was that question please?

(The question was read.)

A. No. For approval, is what you said, isn't it?

Q. Yes.

A. No.

Q. Now what was the practice as to the payment of bills incurred for the Iolanthe and the ~~Clip~~?

A. The Iolanthe was my own boat, and all bills were o. k'd or no expense was incurred before I approved it. That is generally speaking. And all bills were ok'd before they were paid, for the Iolanthe or the Clip.

Q. How about the Clip?

A. The same way, they were my fishing boats.

Q. Now was Mr. Riley ever your secretary?

A. No.

Q. Did you ever tell anybody that he was?

A. No.

Q. Did you ever tell anybody that he was your representative?

A. No.

Q. Or your agent?

A. No.

Q. Now some question has been raised here as to why the stockholders of the Seminole Boat Company continued to make payments on behalf of the Seminole, although the stock was non-assessible. I would like you to tell us your reason for that.

A. Well, if we didn't make the payments I suppose the boat would have been sold; and anyway the payments were for something we had used. I presume, on our trips. The bills were always paid,—will you repeat the question please.

Q. Well, from the time of the formation of the corporation, expenses were incurred for the upkeep and maintenance of the Seminole?

A. Well, I didn't catch that.

Q. From time to time, and the records show that the stockholders made good deficits incurred by the corporation. I would like you to tell us what your purpose was in continuing to make good those deficits from year to year.

A. Well, we formed the corporation to charter the boat, and we thought we would make a profit out of it; and also we thought if that continued we might use it from time to time.

Q. Mr. Phipps, I show you a letter dated March 20, 1934, which has been marked Libelants' Exhibit 46.

A. Who are the Libelants?

Q. The other side. Did you ever see that letter before?

A. (Witness examining letter.) Never.

Q. Did you at that time give any instructions to Mr. Hawkins to write such letter?

A. No.

Q. Or anything in connection with such letter?

A. No. I think he made a mistake there, I don't know.

Q. Now do you know how the Seminole Boat Company's bills were paid, from the time of the formation of the corporation down to the time of the fire?

A. My brother paid half and I paid half of the expenses.

Q. I mean, Mr. Phipps, the details of where the money came from in the first instance, and how it was paid.

A. Oh it was paid by the Seminole Boat Company.

Q. And do you know of your own knowledge how the checks were drawn and issued, and by whom?

A. No, I don't.

Q. Have you ever been familiar with that procedure?

A. No.

Q. Mr. Phipps, there is in evidence here a certificate of enrollment and yacht license of the Seminole dated in 1923, which does not appear to bear your name except that it says in the body of the document "John S. Phipps, citizen of the United States, sole owner of the vessel called the Seminole". Did you ever see such a document before?

A. No.

Q. Did you have anything to do with the enrollment and license of the Seminole at that time?

A. No.

Q. I show you similar document dated in November, 1924, which does not appear to bear your name except in the body of the document, where it says substantially the same thing. Did you have anything to do with that?

A. No, sir, I never saw either before. I had nothing to do with them.

Q. Is it correct that you were the sole owner of the Seminole at those times?

A. No.

Q. When you first acquired an interest in the Seminole, did you remember what the power was that propelled her?

A. Steam.

Q. What did you have to do with the elimination of the steam plant and the installation of the gasoline plant?

A. Well, my brother and I thought it would be more convenient to have gas instead of steam. All we had to do was tell Mr. Robinson in the office,—this is before any incorporation, a long time ago,—what we did, we told Mr. Robinson to see what the steam—what a gas engine would be, suitable for the Seminole, and to remove the steam plant and put what he decided to go, in.

Q. Did you have anything to do with the layout of the gasoline tanks and feed lines?

A. I couldn't, I don't know anything about that—I didn't.

Q. Did you visit the Seminole during the work of changing from steam to gas?

A. No. I don't remember where it was done.

Q. Did you observe any part of that operation?

A. No.

Q. Something has been said about the use of hour pennant on the Seminole. Will you tell me whether or not you ever instructed anybody to fly your flag on the Seminole?

A. I never did.

Q. Do you recall ever seeing it flown?

A. I don't remember that it was.

Q. When you went on a cruise accompanied by fishing boats,—cruise with the Seminole, do you know where the fishing boats got their supply of gasoline?

A. From the Seminole.

Q. Do you know how they got it?

A. No.

Q. Do you know that there was any method by which gasoline could be drawn off from the tanks in the engine room?

A. Oh no, I thought it was pumped from the deck. I really didn't look into it. Are you sure it wasn't pumped from the deck?

Q. I am afraid I can't answer the question, Mr. Phipps, I am not allowed to. Mr. Phipps, I show you Libelants' Exhibit 24, document headed at the top, E. A. Wright, and then some other words; did you ever see that document before?

A. No.

Q. Or any document resembling it?

A. No, I don't remember it.

Q. Do you know anything about—

A. I haven't seen it.

Q. Do you know anything about the rules of the Bureau for the Prevention of explosion and fire on motor boats?

A. No.

Q. Did you ever hear of those rules?

A. No.

Q. Did you ever hear of the rules of the National Fire Protection Association?

A. No.

Q. Did you know there was such a thing?

A. No.

Q. Did you ever hear anything about the rules—

A. The insurance company?

Q. Did you ever hear anything about the rules of Lloyd's in reference to yachts?

A. No.

Q. Did you know there was such a thing?

A. Yes; I don't know about the rules, but I knew there was Lloyd's.

Q. What does Lloyd's mean, to you?

A. Lloyd's Insurance Company.

Q. Do you recall ever being at the yacht basin at Ft. Lauderdale, operated by Captain Pilkington?

A. What was that question, please?

Q. Do you recall ever being at the yacht basin at Ft. Lauderdale, operated by Captain Pilkington?

A. Yes.

Q. How many times, do you recall being there?

A. Well, I was there two or three years before Pilkington was there, I think, first, when Mr. Corey was there.

Q. I am speaking about your possible visits to that place in connection with the Seminole.

A. I was there.

Q. And how many times do you recall being there?

A. Twice.

Q. Can you fix the year of either of those visits?

A. No. Once with Riley.

Q. And on the other occasion did you go with anyone?

A. With Mrs. Phipps.

Q. Now, let's take the occasion of the visit with Mrs. Phipps. Did you have any discussion with Captain Pilkington at that time?

A. No.

Q. Do you remember what boat you visited?

A. I should think it was the Iolanthe, but I am not sure. I don't remember at all. It must have been on the Iolanthe, and on the Seminole, but I don't recall.

Q. Now take the visit with Riley, did you have any conversation with Captain Pilkington?

A. No.

Q. Did you discuss with him anything about the storage rates for the Seminole?

A. No.

Q. Or the Iolanthe?

A. No.

Q. Or the Clip?

A. No.

Q. Did you introduce Riley to Pilkington as—

A. No.

Q. Did you tell Pilkington that Riley was your secretary?

A. No.

Q. Did you tell Pilkington that Riley represented you?

A. No.

Q. Did you tell Pilkington that you were the owner of the Seminole?

A. No.

Q. Did you tell Pilkington to take orders from nobody but Riley?

A. No.

Q. Did you tell Pilkington that Riley was your agent?

A. No.

Q. Did you tell Pilkington that Riley would be down to visit the Seminole at any particular interval of time?

A. No.

Q. Or that he would be down to visit the Seminole at all?

A. No.

Q. Do you recall a trip north that the Seminole made in the summer of 1929?

A. Yes.

Q. What was the occasion of that trip?

A. Well, I thought it might be useful—my father was a very old man, and I thought that if I sent the boat up there in the hot summer that he would enjoy trips up and down the Hudson, so I sent it up there for that purpose. I sent it up or it was taken to Port Washington; I think that is the place.

Q. What was the condition of your father's health at that time?

A. He wasn't very well; I think he was 89 years old. What date was that?

Q. That was in 1929.

A. Can I ask Mr. Layman?

Q. No; we want just your recollection.

A. I know he was a very old man and not very strong, and I thought it would be very good to take trips on the Hudson, so I sent the boat up, hoping that he could use it.

Q. Did you consult with anybody else before you did that?

A. I consulted with Mrs. Guest. I think Mr. H. C. Phipps was abroad.

Q. To whom did the Seminole belong in 1929?

A. In 1929? When was the Seminole Boat Company formed?

Q. Do you remember when the Seminole Boat Company was formed?

A. It was formed about that time, about 1928 or 1929. I think they had a record of that before.

Q. From the time of the formation of the Seminole Boat Company to the time you transferred your interest in it in exchange for stock, did you ever again become the owner of the Seminole?

A. No.

Q. Do you remember an engineer named Brown who worked on the Seminole?

A. Yes.

Q. Did you ever have any discussion with him as to engineering work in the engineroom of the Seminole?

A. No.

Q. Do you remember his ever asking your approval for making any changes in the engineroom?

A. No.

Q. On whom did you rely as far as your interest in the boat went at that time for information as to what should be done?

A. What year was that?

Q. That was in 1927, or the early part of 1928, before the formation of the corporation.

A. Captain Nelson, I presume, or whoever was Captain of the boat would tell me what was needed on the boat,

Q. Now in 1929 following the formation of the Seminole Boat Company did you ever ask Captain Bryant to take charge of the Seminole?

A. No.

Q. Do you remember having any conversations with Captain Bryant about any needs for the Seminole?

A. No.

Q. Did you ever give him any instructions about anything to be done in the engineroom?

A. Was he captain then?

Q. I will ask you to assume that Captain Bryant was Captain of her at this time in 1929.

A. No, I never gave him any instructions about the engineroom at any time.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Phipps, you have been shown this certificate of enrollment of the Seminole in the year 1923, when it was enrolled under an affidavit that you were the sole owner of the vessel at that time. Now, you say you don't know anything about that.

A. Well, I wasn't the sole owner; I never saw the enrollment—I never saw that paper before this minute.

Q. Did you have anything to do with this arrangement of enrolling?

A. No; I never heard of it until just now.

Q. You knew the boat had to be enrolled, didn't you?

A. You mean in the Yacht Club?

Q. No.

A. I really don't know anything about that.

Q. That is a formality with the United States Government?

A. I think the Captain took care of that; I don't know whether it had a number; I never saw that paper before, and I never gave Captain Nelson authority to do it. I suppose that if he had come to me and told me, I would have not put myself down as sole owner, because it wasn't correct.

Q. I understand that the matter of this kind was left to Captain Nelson, is that right?

A. Entirely, I suppose; I never saw it before.

Q. You left it to him to comply with government formalities necessary?

A. Yes, I presume—

Q. This is the document that gave the boat its official number, is it not?

A. I don't know.

Mr. Underwood:

We object to that; it speaks for itself, and the statutes and regulations speak for themselves, and Mr. Phipps has already testified.

Mr. Matteson:

I won't press that question, if your Honor please.

The Court:

All right.

The Witness:

You want to press it?

(By Mr. Matteson):

Q. I don't think it makes any difference.

A. All right.

Q. How do you know that the boat had to have an official number; you knew that, didn't you?

A. No.

Q. You didn't know about that?

A. No, I didn't.

Q. You didn't know that?

A. No, I didn't.

Q. Apparently this document was arranged by Captain Nelson. Now I want to ask you if you have any explanation to give us as to how Captain Nelson got the impression that you were the sole owner of the Seminole?

Mr. Underwood:

I object to that as calling for the operation of the mind of Captain Nelson.

The Court:

I think the question is all right.

A. Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I don't think he had that impression.

Q. You just volunteered the statement, Mr. Phipps, that you didn't think that Captain Nelson had that impression. Now, to correct that impression, I call your attention to the fact that Captain Nelson made a sworn statement at that time to that effect. So it could not be very well that Captain Nelson had that impression at that time, could it?

Mr. Underwood:

I object to that; it is speculative and argumentative, and calls for the operation of another person.

The Court:

I think that objection is well taken, Mr. Matteson.

(By Mr. Matteson):

Q. Was Captain Nelson the Master of the boat at that time?

A. Yes.

Q. Did you have conversations with Captain Nelson with respect to the requirements of the Seminole?

A. I don't remember.

Q. You never had any conversation with him at all?

A. Not about this enrollment.

Q. I am not talking about the enrollment.

A. Yes, I talked to him, of course; he was my captain.

Q. Isn't it a fact that you are the one that he consulted with at that time with respect to anything that was required for the Seminole?

A. No.

Q. Did your brother have anything to do with Captain Nelson as the master of the Seminole, as far as you know?

A. Just as much as I did.

Q. Now, Mr. Phipps, I call your attention to this second certificate which was filed a year later, in 1924, and also by Captain Nelson and in which there is again a sworn statement that you were the sole owner of the Seminole at that time. Can you give us any explanation of how Captain Nelson had that impression at that time?

A. I don't know; personally, I don't think he had that impression.

Q. Do you recall signing this document which is headed "Answers to Interrogatories", at the end of which is an affidavit that you signed?

A. Yes; that is my signature. May I read the thing; I don't know what it is all about.

Q. Surely. I was going to call your attention to some parts of it.

A. (Reads paper.) I know nothing about the engine-room. You better not put this down.

Mr. Underwood:

Everything that you say, Mr. Phipps, is going to be put down, so please don't speak anything except in answer to questions.

A. All right.

Q. Is that correct?

A. That is correct.

Q. You have finished reading that document?

A. Yes.

Q. And all of the statements in that document are correct, are they?

A. According to my best knowledge and belief. I swore to it, so I am sure they are.

Q. I assume you read it more carefully at the time you swore to it.

A. I presume I did.

Q. Of course, there are some answers that are answers to questions that do not appear in the document itself.

A. Yes.

Q. But at the time you of course compared the answers with the questions, I assume?

A. I don't remember.

Q. Anyway, you were quite certain that everything in it was quite correct when you signed it?

A. Yes.

Q. You still say so?

A. To the best of my knowledge and belief.

Q. I call your attention to "Answer 1-I, in which it is stated that the Seminole was registered at only one club until 1921; it was registered in the name of Henry C. Phipps; from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club". That is a correct statement, is it not?

A. I was told that it was registered—I would like to speak to my attorney; I think it was registered. I

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am on the witness stand, and I understand it was registered with the New York Yacht Club, but I don't know what year that was. I don't know what clubs these were that I referred to in this thing.

Q. The answer starts out with the statement that the Seminole was registered at only one club.

A. I can't tell; I said that whole statement is true and I believe it is true.

Q. And that was the New York Yacht Club?

A. I wouldn't say it was; I believe it was, because my brother and myself were members of it.

Q. Both you and your brother were members of the New York Yacht Club?

A. Yes.

Q. And still are?

A. No, we both resigned.

Q. When was that?

A. I don't know. I guess you can get the record on that.

Q. Since 1932?

A. I wouldn't guess.

Q. This statement says that it was registered in your name.

A. It is easy to verify it. Get the New York Yacht Club register and it will be easy to find out.

Q. And the Seminole Boat Company was incorporated in 1928, was it not?

A. Either in 1928 or 1929, somewhere in there; someone will have to give me the figures, because it is hard from me to remember the years; I think it was 1928 or 1929.

Q. If we are correct in that, Mr. Phipps, the Yacht Seminole remained registered with the New York Yacht Club as your personal yacht until 1932?

A. I don't say that; I don't know whether it was registered with the New York Yacht Club at that time or not.

Q. Registered with some Yacht Club?

A. Well, it says so in that statement. I don't know what the club was in connection with that.

Q. Getting back to the conversion of the Seminole from steam to gasoline; was Captain Nelson the captain of the boat at that time?

A. Yes.

Q. Who arranged for the work to be done?

A. Captain Nelson.

Q. You left that entirely to him?

A. Yes.

Q. Do you know whether he did most of the work himself or whether he employed a shipyard to do it?

A. I don't know.

Q. Wasn't a good deal of the work done right in Palm Beach?

A. I don't know; I didn't ask where it was done; I don't know where it was done.

Q. You have no recollection at all about that?

A. I have no recollection except that I know it was changed.

Q. Did you give Nelson any instructions as to how the work should be done?

A. No.

Q. Did you tell him anything about how much it should cost?

A. No.

Q. I suppose you paid the bills, did you?

A. I presume so; I don't know; I must have, however.

Q. At least your share of them?

A. Yes; that is, my brother paid half and I paid half.

Q. That was somewhere back of 1924?

A. Yes.

Q. When you paid these bills, Mr. Phipps, I assume that you saw them and approved them before you paid them?

A. No.

Q. What is that?

A. No, I didn't see them.

Q. You mean to say that you paid the bills without seeing them?

A. They were okayed in the office and then I would pay them.

Q. Okayed by whom?

A. By whoever was my secretary; by Mr. Robbins.

Q. Was Mr. Robbins your secretary at that time?

A. He was there at that time, yes.

Q. Was he in Palm Beach?

A. No.

Q. Where was he?

A. At that time I don't know.

Q. I mean when Mr. Robbins acted as your secretary.

A. In New York.

Q. He was in New York?

A. Yes.

Q. I mean when Mr. Robbins acted as your secretary.

A. In New York?

Q. He was in New York?

A. Yes.

Q. Has he always been in New York?

A. Well, I don't know.

Q. I mean since he has been working for you, Mr. Phipps, has he always been in New York?

A. Well, I am wondering about that; I can't answer yes or no; he might have been down here one winter at Palm Beach, but I have no definite idea about it; I just couldn't tell you.

Q. Is Mr. Robbins your secretary now?

A. No.

Q. When did he cease to be your secretary?

A. When he took over the real estate department in New York.

Q. What do you call your real estate department?

A. Henry Phipps estates.

Q. Is he in charge of that organization?

A. He is second in charge.

Q. Does he have something to do with the Phipps Realty Company?

A. No. Now, that would be hard to say. The Phipps Realty Company, I believe—I think the Phipps Realty Company owns Henry Phipps Estates. I am not sure about that, unless I looked at my books.

Q. Does Mr. Robbins represent your family interests in New York?

A. To some extent.

Q. Mr. Hawkins represents your family interests in Miami, does he not?

A. In Miami, yes.

Q. And before him Mr. Scott?

A. Yes.

Q. And when Mr. Scott was here was he the superior officer of Mr. Hawkins?

A. Yes.

Q. So that he would take his instructions from Mr. Scott; wouldn't he?

A. How is that?

Q. He would take his instructions from Mr. Scott; Mr. Hawkins would take his instructions from Mr. Scott, would he?

A. Yes.

Q. Now, getting back to the organization of this corporation, you say—

A. Which corporation?

Q. The Seminole Boat Company. You say that that was organized because you wanted to charter the Seminole, is that right?

A. Yes, because I wanted to go in the business of chartering the Seminole.

Q. You and your brother were of the same mind about that?

A. We discussed it and agreed.

Q. And you owned equal shares of the Seminole at that time?

A. That is correct.

Q. So you caused the Seminole Boat Company to be organized, did you not?

A. I didn't; we did it together.

Q. The two of you together?

A. Yes, the two of us; we owned it together and we decided it would be a good idea.

Q. And you took equal shares of the stock of the Seminole Boat Company?

A. Yes, sir.

Q. So that if the boat was chartered and made a profit you would receive equal shares of the profits, is that right?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now if you and your brother had wanted to do so you could have chartered the Seminole without organizing a corporation, couldn't you?

A. If I and my brother wanted to charter the Seminole, yes we could.

Q. So far as the profits were concerned the result would have been exactly the same, wouldn't it?

A. I don't think so.

Q. Well, if you had chartered the boat jointly between you, you would have shared the profits equally, wouldn't you?

A. We would have had the detail of the business, and my brother and I didn't want to have the chartering of the boat; it was a continuous thing; the boat was always for charter.

Q. Had you had the details of the management of the Seminole before that?

A. No.

Q. And your brother hadn't either, had he?

A. No.

Q. Everything with respect to the Seminole had been taken care of by your family representatives?

A. No; by the captain.

Q. And by your Mr. Robbins to some extent?

A. Will you read that. I don't quite understand it.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Well, I think, until the Seminole Corporation was formed Mr. H. C. Phipps and I gave orders about the Seminole.

Q. And you wanted to be relieved of that detail, was it?

A. It was a business. Mr. Hawkins suggested that we put the Seminole in a corporation and charter it and continue to charter it.

Q. Now the point I am making, Mr. Phipps, is that you could have done exactly the same thing without organizing a corporation, couldn't you?

A. We wouldn't.

Q. You wouldn't?

A. No.

Q. But you could have?

A. I suppose legally we could have.

Q. And the result would have been exactly the same?

A. No.

Q. The final result would have been the same?

A. No, it would not.

Q. Perhaps I do not make myself clear: if you chartered the boat as individuals you would share the profits less the expenses?

A. Yes.

Q. And being joint owners of the stock of the corporation, each owning 50% of the stock of the corporation, you would share the profits that the corporation made in the same way, wouldn't you?

A. Yes, but we wouldn't make as much profit. Is that what you are trying to get at?

Q. So that the principal difference that was made by the organization of the corporation was that the names of yourself and your brother did not appear as charterers of the vessel, is that right?

A. Say that again.

Mr. Matteson:

Will you read the question?

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. No; that is not right.

Q. Mr. Scott, the president of the corporation, was your family representative in Miami at that time?

A. That is correct.

Q. And as such you could call on him to take care of your personal business matters, couldn't you?

A. Yes, and for all members of the family.

Q. And that was true of Mr. Hawkins also?

A. Yes.

Q. You could call on him for your personal business when you required it?

A. Yes.

Q. And that was also true of Mr. Alley in Palm Beach?

A. Yes.

Q. So that if you had wanted to go into the charter business personally you could have called on these three men to take care of the detail for you, couldn't you?

A. No, we could not.

Q. You have stated, Mr. Phipps, that you were never called upon to make decisions with respect to the repair and maintenance expenses of the Seminole. Now Mr. Hawkins testified here, as I recall it, that when he was looking out for the Seminole he had a mental limit of \$500.00 as to what he would expend without consulting with you, and that on one or more occasions he did consult with you when the contemplated expense exceeded that amount. Do you recall that?

Mr. Underwood:

If your Honor please, I object to the question as not a fair representation of Mr. Hawkins' testimony.

Mr. Matteson:

If you will show us or point out in what respect it is incorrect—

Mr. Underwood:

Mr. Hawkins' testimony was that it came to a point above which he didn't want to go on his own responsibility, that he consulted both stockholders.

Mr. Matteson:

Perhaps I inadvertently left that out.

Mr. Underwood:

You left it out.

Mr. Matteson:

If that is the only objection, we will correct that. Add the words "and your brother" in each instance. Now will you read that question as amended, Mr. Reporter?

(Thereupon the question, as amended was read by the Reporter as follows: "You have stated, Mr. Phipps, that

you were never called upon to make decisions with respect to the repair and maintenance expenses of the Seminole. Now Mr. Hawkins testified here, as I recall it, when he was looking out for the Seminole he had a mental limit of \$500.00 as to what he would expend without consulting with you and your brother, and that on one or more occasions he did consult with you and your brother when the contemplated expense exceeded that amount.")

Q. Do you recall that?

A. That makes a lot of difference. I don't know anything about any such limit. If there had been major changes in the boat he would have consulted me and would have consulted my brother too.

Q. Do you recall that he did on more than one occasion so consult you?

A. On one or more occasions there were some major repairs that he did consult me on.

Q. Mr. Riley testified here that in similar manner he had a mental limit of about \$300.00, and that when any expense was contemplated of more than that amount he would and did consult with you and your brother on one or more occasions and obtained your approval. Do you recall that?

A. No.

Q. You don't recall Mr. Riley ever asking you for your approval of an expenditure of \$300.00 or more on the Seminole?

A. No.

Q. You don't say that he didn't do that, do you?

A. Well, I don't remember his ever doing it. If he said he did it, I believe him, but I don't remember him ever doing it.

Q. Well, Mr. Phipps, it is true, is it not, that for several years before the fire Mr. Riley did have charge of the Seminole.

A. No.

Q. Well, there is—

A. He may have represented the Seminole Boat Company, but he never had charge of the Seminole through me; I never delegated the management of the Seminole to him.

Q. I was trying to make the question general, Mr. Phipps; whether you gave him instructions or not, you know that he was in charge of the Seminole?

A. I wouldn't say that he was; I don't know of him being in charge of the Seminole.

Q. And you were consulted by Mr. Hawkins when he got an offer to sell the boat for \$5,000.00?

A. Yes.

Q. He came to you and asked you your approval of that sale, is that right?

A. No. He said that he had an offer of \$5,000.00 and thought it would be a good thing to sell the boat. Is that what you mean?

Q. Yes.

A. All right.

Q. Did he ask you for your approval of the sale?

A. And I said, "I didn't know".

Q. His speaking to you was for the purpose of obtaining your approval or disapproval, was it not?

A. He wanted to know if I was willing to sell the Seminole for \$5,000.00 I think you must say "we", because I couldn't sell the Seminole.

Q. I think Mr. Hawkins said that he spoke to each of you.

A. Very likely he did; I am sure that he must have.

Q. But he did speak to you as far as your interest was concerned?

A. Yes.

Q. Now after this corporation was formed, as I understand it, you did have the right to use the boat when

you wanted it, assuming that she wasn't chartered to someone else?

A. Or a charter was being negotiated.

Q. Well, I take it that if a charter was being negotiated—

A. I would have taken the money.

Q. What?

A. I would have chartered it.

Q. At least, you would have approved it; you would have preferred to do that.

A. If a charter was negotiated I would rather charter it than to take it myself.

Q. But outside of that you did have the right to use the Seminole when you wanted to?

A. Yes.

Q. And when you wanted to do that you called Mr. Hawkins or Mr. Riley and told them that you wanted to use it?

A. Yes.

Q. This trip that you made in April, 1935, the trip to the Keys, the last trip, how did you arrange for the use of the Seminole on that trip?

A. I asked Hawkins—well, I don't know, because—

Q. You spoke to Mr. Hawkins, is that right?

A. I am only guessing about it; I don't know how it was arranged; certainly it was arranged if nobody else had the boat.

Q. Isn't it a fact that you communicated with Mr. Hawkins at that time and told him that you would like to use the boat?

A. I communicated with somebody who had charge of the Seminole.

Q. You don't recall who it was?

A. I don't know; I presume it was Hawkins.

Q. Is there any doubt in your mind that it wasn't?

A. Well, just as much doubt as it was not; it could have been Hawkins.

Q. Now on these occasions when you did make use of the Seminole you paid the operating expenses?

A. Yes.

Q. And that is all you paid, isn't it?

A. The operating expenses of the charter party of the trip, yes.

Q. Of the charter?

A. Of the charter.

Q. You paid nothing for the use of the boat?

A. I paid nothing for the use of the boat, no, except it really came to paying for the use of the boat, because I paid the men on the boat; I paid the men that were on the boat; I paid their wages and it was that much advantage to the company, that much gain to the company.

Q. Well, as a matter of fact, Mr. Phipps, except when the boat was in use she had been laid up practically continuously at Fort Lauderdale, had she not?

A. I don't know. Is that so?

Q. You don't know that?

A. No, I don't.

Q. You don't know that she had been laid up at Fort Lauderdale practically continuously from 1931?

A. I knew she had been laid up at Fort Lauderdale, but I don't know that it was continuously; I don't recall how many charters she had during that time.

Q. Do you know that she had no charters after 1931?

A. No.

Q. Do you know that she only left Fort Lauderdale four times after 1931?

A. No.

Q. You didn't know that?

A. No.

Q. You made a trip on her to the Keys in August, 1932, didn't you?

A. Is that the last trip? I get mixed up in these dates, I am sorry to say.

Q. No. There was a time in August, 1932 when a trip was made to the Keys.

A. If you will tell me who was with us, I will tell you whether I went. Couldn't you assist me in that?

Q. I will try to assist you. Mr. Riley produced here yesterday a list of groceries which he bought for the trip in 1932 and, as I recall his testimony, he said that you wanted to make a trip and he got the boat at Fort Lauderdale and stocked her up with groceries, and those were the groceries in August, 1932. Does that recall anything to your mind?

A. Well, if he said it, it is so.

Q. You have no recollection of that?

A. I couldn't pick them out; if it was a trip, tell me what we did at the time and I will be able to tell you probably.

Q. In connection with the use of the Seminole you keep bringing in the word "charter". There was no document signed, was there?

A. I think, for the sake of the company and my partner or my family that it was an advantage for either one of us to use the Seminole, because it relieved the other of any expense during the time it was laid up, or whatever it was, and it was the same as a charter. I do not draw any distinction between a charter and this, except I don't think there was any charter form drawn up.

Q. When you use the word "charter" it is because in your mind the arrangement was the equivalent of a charter?

A. Not only that, but that was the business of the Seminole Boat Company to charter the boat.

Q. It was the business of the Seminole Boat Company to charter the boat to make money, wasn't it?

A. - Yes.

Q. And they couldn't make money by letting you use the boat for nothing?

A. Yes; they could save money.

Q. In any event, there was no document or charter or anything in writing about the use of the boat?

A. I don't remember any document being signed. It may have been in the records; have you asked for it.

Q. If there was one, Mr. Phipps, I guess we would have seen it long before now.

A. All right.

Q. With reference to this last trip, in April, 1935, I understand Mr. Hawkins consulted with you as to whether Captain Baker should be employed as captain for that trip, is that right?

A. He asked me if Baker would be satisfactory as captain of the boat. Hawkins was collecting the crew, and he asked me if Baker would be satisfactory, and I had had Baker before, and I said it would be entirely satisfactory.

Q. There is another statement in these answers to interrogatories that I want to verify from you, Mr. Phipps, and that is found in Answer 7-B, which is this sentence right here (pointing).

A. May I read the whole thing?

Q. Yes; sure.

A. That is correct.

Q. That is a correct statement?

A. Yes.

Mr. Matteson:

Now, I will read into the record just this part of it.

Mr. Underwood:

Read it all.

Mr. Matteson:

No; I am going to read part of it. "R. C.—

Mr. Underwood:

If your Honor please, this is a single whole answer to one question. I don't think the record should be put in piecemeal, I think we should have the whole of it, if we have any part of it.

Mr. Matteson:

It is a part of the record anyway.

The Witness:

It is only ten lines.

Mr. Matteson:

There are four sentences in the paragraph, and I am asking the witness about one complete sentence.

The Court:

Just let the question be completed, and then make your objection.

(By Mr. Matteson):

Q. I am reading you the following sentence found in this answer: "R. C. Abel was in Respondents' employ at a monthly wage, working generally in connection with Respondent's fishing boats, except upon occasions when his services were employed by another who paid his wages for such period". Is that a correct statement?

A. That is a correct statement.

Mr. Underwood:

I object to that on the ground that it does not include the entire answer to the question propounded in the interrogatories.

The Court:

Let me see it.

Mr. Matteson:

If your Honor please, Mr. Underwood is trying to force me to—

Mr. Underwood:

I am trying to force you to be fair.

Mr. Matteson:

I resent that statement. This is a cross examination of the witness, and if he wants to testify about the other matters he can do so in answer to your questions.

The Court:

Where are the questions in connection with the interrogatories?

Mr. Underwood:

Shall I read them to you?

The Court:

Are they in the record?

Mr. Underwood:

They are all attached to the libel. I can find them for you.

Mr. Matteson:

I have a set here, if your Honor please, in which the questions and answers are opposite each other.

Mr. Underwood:

They are 7-A and 7-B.

The Court:

Now, Mr. Phipps, Mr. Matteson (you can just be seated) quoted from your answer under this heading 7-B.

Do you understand that he quoted the question. Now, Mr. Reporter, will you read the question to him. You look at this and the Reporter will read the question to you.

(Thereupon the Reporter read the preceding question as follows: "I am reading you this complete sentence found in this answer: 'R. C. Abel was in Respondent's employ at a monthly wage, working generally in connection with Respondent's fishing boats, except upon occasions when his services were employed by another, who paid his wages for such period'".)

The Court:

Now, don't answer that. The question of Mr. Matteson thus far was the quoting of this which you see here is a part of your answer. Now he is going to proceed and ask the question. Now listen to the rest of the question.

Mr. Matteson:

Read it.

(Thereupon the preceding question was read by the reporter as above recorded.)

The Court:

Now he asked you was that a correct statement. Now, Mr. Phipps, I call your attention to this fact that your attorney has made an objection that in the quotation from this answer to 7-B the entire matter was not quoted. Wait a minute; I am explaining it to you. Now, I am calling your attention to what was the question. Just read right here, beginning at 7-A. B, C, D, E and it goes over on the other page to F. Now then, Mr. Phipps, you will be allowed to answer that question, but in so doing.

you may, if you wish, read the entire answers that you gave, beginning with 7-B; and going on down.

The Witness:

Is this something I have signed; is this my testimony; what is this paper; is this something that I said was true?

The Court:

Isn't that your signature right there?

The Witness:

Yes, that is my signature.

The Court:

I will explain this to you: These were interrogatories which were propounded to you when the suit was instituted and the interrogatories were these, beginning right there (pointing).

The Witness:

And these are my answers?

The Court:

Those are your answers over your signature.

The Witness:

Yes, that is correct. May I just read my answer?

The Court:

You will have to answer his question, and in so doing you may read both the question and answer; you may read what the entire question was and what your answer was.

Mr. Matteson:

If your Honor please, I call attention to the fact that my question did not in any way relate to June 24, 1935.

and I would like to make it clear that my questions specifically exclude that date.

The Court:

The witness can take that into consideration, too.

Mr. Underwood:

Something else has transpired that I think you should have in mind perhaps before you rule on the question, and that is that when that interrogatory was first propounded Mr. Phipps made answer to it in these words: To 7-A he answered "Yes". To 7-B he answered: "R. C. Abel was not in Respondent's employ in any capacity on June 24, 1935."

Following the filing and serving of these answers exceptions were taken to them, and as you will remember, your Honor, they were argued here, and the exceptions to that answer was sustained, and Mr. Phipps was ordered to make a full and complete answer, which he later did, and which is now in the form presently before you. The Libelants asked for that answer and it was given, and they never took exception to it; they never moved to strike any part of it out as surplusage or as not being responsive, therefore, I urge that if any part of this is to be put to the witness, it ought to be put to him as a whole.

The Court:

The witness can answer the direct question. He can incorporate any other part of the answer that he wishes to.

Mr. Underwood:

I have no objection to Libelants putting to the witness the same question again as included in the interroga-

stories, but if they call his attention to any part of one answer, I think it only fair that he be asked about the entire answer, because it is all a part of the answer which has been considered proper and responsive up to this moment.

The Court:

Don't you think that by calling Mr. Phipps' attention to that entire answer, that the point is covered?

Mr. Underwood:

I think the question should embody the entire answer, and I don't think it should be broken up piecemeal.

Mr. Matteson:

It seems, if your Honor please, that we are getting involved here and are wasting time, so I am going to withdraw this question and get at it in a different way.

The Court:

All right.

(By Mr. Matteson):

Q. Mr. Phipps, I want to ask you if it is the fact that in the year 1935 Mr. R. C. Abel was generally employed by you on a monthly wage, working generally in connection with your fishing boats, except upon occasions when his services were employed by another, who paid his wages for such period; is that the fact?

A. Isn't that the same question you just asked me?

Q. I am not referring to any document now at all. I am asking you whether that is a fact as I have stated it. If you want to refer to any document, you can do so, but I am not asking you to do it.

A. Read the question again. I am very sorry, but I want to be sure. Will the stenographer read the question again?

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I don't know; I am really confused about it.

Q. Would you like to have the question read to you again?

A. No; go ahead; I don't know. Give me another question.

Q. Well, Mr. Phipps, if you are confused about this one, we will read it to you as many times as you would like and give you all the opportunities you wish to consider it.

A. I don't know how long Abel was employed by me at that time. I do not know that when Abel was in my employ he was also employed by others, and Riley had authority to use him for others, that is, for my relatives or brothers or some of their parties, or for some of the corporations, and he did so use him, and when he did so use him they paid him, and while he was using him he was no longer my servant; he was their servant, and his time was paid by those who used him. Is that what you want?

Q. That is exactly what I want. Then, if I understand it correctly, except at such times when Mr. Riley appointed him to do something else, that Riley had authority—

A. That is not correct; Riley had permission from me to use him that way.

Q. And except when he was so used he was employed by you?

A. Well, I wouldn't say whether that is true or not, because I don't know the period of how long a period he was employed; he may have been employed only a short time. When he was on the *Iolanthe* he was employed by me, and also when he was on the *Clip*. If he went on the *Clip* on a fishing trip with Townsend Martin, Townsend Martin would pay for the time that Abel worked for him.

Q. Well he did work for you continuously through 1934 and 1935, except at such times as Riley required him for someone else?

A. Or when somebody else required him. I don't think it was always Riley; in fact, I am quite sure it wasn't.

Q. If anyone else than Riley wanted him, I suppose they would have asked you?

A. No, it was a family affair, and they would take him.

Q. With your permission?

A. They would take him and they would pay him; Riley would send them a bill for it.

Q. I show you this document here, Mr. Phipps: do you recognize that handwriting on this note here?

A. That is my handwriting. Who is that addressed to

Q. Well, it is written on a bill of Captain Pilkington's.

Mr. Underwood:

Dated August 31, 1932, referring to fishing boats and the Iolanthe, without any mention of the Seminole on the paper; is that correct?

Mr. Matteson:

That is correct.

(By Mr. Matteson):

Q. My inference, Mr. Phipps, is that it was directed to Mr. Riley, but that may not be correct, so I am asking you.

A. This is my handwriting, and I believe this is my okay "J. S. Phipps", and this is a bill from Pilkington, and I presume I thought it was pretty high.

Q. Who was that note addressed to?

A. It is addressed I presume to Riley, because that is his initials on there.

Q. You intended that note to reach Mr. Riley?

A. I didn't want him to pay the bill before seeing if he could get a reduction. It was a bill for the fishing boat and the Iolanthe, and it has nothing to do with the Seminole.

Q. That bill has nothing to do with the Seminole?

A. No.

Q. Well, in your note you asked him to see if he could get a reduction on the Iolanthe and the Seminole, didn't you?

A. Well, they had overcharged me on the Iolanthe, and I thought he was overcharging the company on the Seminole. I thought it was a pretty stiff price he was making.

Q. Did you ever tell Captain Pilkington that you thought his price was pretty stiff?

A. No.

Q. I understand that you remember two occasions when you visited Pilkington's yard?

A. Yes.

Q. Was one of those prior to this trip in August, 1932; do you recall?

A. I don't recall the dates at all; I don't know that there was a trip in 1932. Will you show me that there was a trip in 1932?

Q. I think that appears from the records.

A. All right.

Q. You were there with Mr. Riley on one occasion?

A. Yes.

Q. Did you have any words at all with Pilkington on that occasion?

A. Shook hands with him.

Q. You know the gentleman, don't you?

A. No, I don't. He said, "How do you do"; I really don't know; I am quite sure that I shook hands with him, and then Riley went off and talked to him.

Q. In the course of that conversation was there a conversation when the three of you were present?

A. No.

Q. There were no words passed while the three of you were together, is that your recollection?

A. You mean about the weather or anything?

Q. About anything.

A. I don't remember about any conversation.

Q. And you say there was no conversation in your presence with respect to rates of storage?

A. That is correct. You mean a conversation between Pilkington and Riley?

Q. Yes.

A. That is correct.

Q. And there was no conversation between Pilkington and Riley with reference to rates in which you took part?

A. No.

Q. Or in which you contributed anything at all?

A. No; that is correct.

Q. Or in which you said anything bearing on rates?

A. Not that I remember.

Q. And that relates to the other boats that you had there as well as the Seminole, does it?

A. I don't remember discussing anything with Pilkington.

Q. You don't remember saying anything to Pilkington about rates on the Iolanthe?

A. No.

Q. Or on the Clip?

A. No.

Q. Or on all three boats lumped together?

A. No.

Q. Do you recall going into the engineroom of the Seminole at the Royal Palm Dock when she was lying here in March or April, 1935?

A. No.

Q. You say you didn't go into her engineroom there?

A. I don't recall going into her engine room.

Q. Do you recall any occasion on which you ever went into her engineroom?

A. I recall twice.

Q. When were they, do you recall?

A. I went in with my brother to look at the new engines when they were installed.

Q. That would be back in the early 20's?

A. That was sometime ago. The second time I don't think I went down in the engineroom; I looked in the engineroom to see if they could put a fisherman in there to sleep. I had quite a large crew of fish boats with me on the trip, and I wanted to find out if we could put another man in the engineroom and I think one man slept in the engineroom, but I am not sure about the man sleeping in the engineroom.

Q. Those are the only two times you remember being in the engineroom of the Seminole?

A. Yes. I don't think I was in that time. I may have been, but I don't know how I got there.

Q. Were you at the Coconut Grove Boatworks when the Seminole was there in March, 1935?

A. Yes.

Q. Do you recall visiting there?

A. Yes.

Q. Did you go on board her that time?

A. Is that the time when the rail was broken. There was an accident around there, wasn't there?

Q. I am talking about the time just prior to this last trip to the Keys in 1935.

A. I don't know whether it was that time or not, but I have been to that yard to see the Seminole.

Q. What was the occasion of your going there then?

A. I think there was an accident to the boat, and I was waiting to go off on a charter. I was sitting there on

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the deck waiting for the boat, and they said they had an accident; that the boat was down here at the place that you mentioned.

Q. Coconut Grove Boat Yard?

A. Isn't that near the aviation field?

Q. Yes.

A. Yes, they said it was down there, and I said, "goodness, I hope you get this fixed quick, because we are sitting out here waiting for a trip"

Q. And that's the only time you visited the Seminole at the Coconut Grove Boatworks?

A. That is the only time I recall.

Q. You were not there in 1935, as near as you recall?

A. I don't recall it, no. Was that in 1935, the time I mentioned?

Q. No; I think not.

A. Oh, I don't know.

Mr. Matteson:

I think that is all at this time, if your Honor please.

By Mr. Botts:

Q. I believe that you stated that you were at the Pilkington Boatyard on only two occasions?

A. Those are the only two that I recall.

Q. It is possible that you might have been down there casually on other occasions that you do not recall, is that it?

A. It is possible.

Q. Yes. Now do you recall who introduced you to Captain Pilkington, or how you became acquainted with him?

A. I don't remember.

Q. You don't know then whether you were acquainted with him before you made these trips or whether you met him on those trips?

A. My impression was I didn't know him before I made the trip.

Q. Then you don't know who introduced you, or how that came about?

A. No.

Q. Now before the Seminole Boat Company was organized, when you and your brother, Mr. H. C. Phipps were the owners, as I understand it, the ordinary expenses for upkeep, storage, repairs, anything of that sort, you and your brother each contributed 50 per cent of that expense?

A. Yes.

Q. And that if either of you took the boat out on a trip, the other not being a member of the party, that the person who made and was responsible for the trips, paid the entire expense of that trip. Now am I correct in my understanding that those expenses included the time of crews or employees on the boat, as well as the expenses for food and so forth?

A. I think that would depend.

Q. All right, sir.

A. It would depend, whether the crew was gotten for that special trip, or whether there was a crew already on board.

Q. I see. In other words, if it should happen that you were maintaining regularly, members of the crew, then those regular salaries would probably have been treated in the same category as repairs, or storage?

A. Well, I really don't know the distinction. I don't know that there is much distinction.

Q. If you gathered a crew for that particular trip, then all the expenses of that crew were treated as a part of the expenses of that trip and paid for by whichever one of you actually used the boat?

A. Correct.

Q. Now when these various bills—and I am speaking now still of the time prior to the incorporation of the corporation,—when these bills, such as storage and ordinary repair and upkeep,—when those were presented, my understanding is that either your secretary or the representative of your family corporation down here, would disburse these regular and ordinary expenses; is that correct?

Mr. Underwood:

May we have the time fixed, your Honor?

Mr. Botts:

I fixed the time; prior to the incorporation of the Seminole Boat Company. Now read the question.

A. I think I have it in my head; I am trying to think what the answer is there. You better read the question again.

(The question was read.)

I will say, yes. Well, wait a minute:

Q. All right, sir, go ahead and make any explanation you want to, sir; I am not trying to cut you off.

A. I don't say they would be paid before our o. k. was on them, because I have forgotten just the course; sometimes we ok'd bills and sometimes we didn't. Now if it was something,—I am talking, before the corporation; if it was something that was ordered by them for me, and they knew I had ordered it, or had to have it, he would pay the bill and then send it to me. But usually I o. k'd my bills and Mr. H. C. did, too.

Q. Now suppose the boat was put in storage, we will give for example, and you knew the boat was in storage

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and had authorized or approved that situation, then when the bill would come in they probably wouldn't come to you and say "Mr. Phipps, do you want us to pay this bill for storage?" They would ordinarily go ahead and pay that sort of thing, wouldn't they?

A. I wouldn't say that. They often sent them to New York.

Q. And in New York—

A. I would like to see them, or Mr. H. C. Phipp would see them.

Q. Or your secretary?

A. He wouldn't o. k. them.

(Thereupon hearing was recessed until 1:45 o'clock p. m. of the same day.)

Tuesday, May 16, 1939, 1:55 o'clock P. M.

Afternoon Session.

2397 (Hearing resumed pursuant to the noon recess; the witness MR. JOHN S. PHIPPS, resumed the stand upon cross examination continued:)

By Mr. Botts:

Q. Do I understand you then, Mr. Phipps, that prior to this incorporation you personally superintended the entire details with reference to the Seminole in the payments of its bills?

A. I didn't—what did you say, supervised the details? I didn't supervise the entire detail; but my brother and I never paid the bills unless we approved them. That's before the Seminole Corporation was formed.

Q. Yes. Then as I understand it, prior to the formation of the Seminole Boat Corporation, no bill for the Seminole was ever paid unless it had the personal approval of either you or your brother; am I right?

A. No, no; because—you might just as well say that about the Iolanthe and the Clip. They were our personal property, and we did o. k., the same as we would o. k. the bills for the Clip and the Iolanthe, and the bills wouldn't be paid unless we o. k'd them, but I wouldn't say they never had been paid, but I don't think it is probable, because I don't think people have the right to pay them.

Q. Well, I will put it this way: Except perhaps for some isolated and unusual occurrence, no bill was ever paid for the boat Seminole prior to the corporation being formed, unless it had the personal approval of you or your brother, is that correct?

A. No. I would say that in the ordinary course of business, the bills were o. k'd by my brother and myself.

Q. All right; and were not paid until you had o. k'd them, is that right?

A. I wouldn't say that. They very likely did pay some few bills, because they had ordered the goods and wanted to keep my credit good, I suppose.

Q. I tried to take care of that situation by injecting the thought that, except in some unusual or isolated circumstance, you or your brother approved and paid the bills; is that right?

A. Well, I don't think so because we were very often away from home; perhaps we gave authority, but I am only guessing, I don't know,—to pay certain bills. But before the Seminole Boat Corporation was formed, those boats were our personal property, and just the same, as I would usually o. k. the feed for my horse, because he had to be fed. But in the ordinary course, all bills that were chargeable to my brother and myself for our boats, were o. k'd by us; just as I understood—

Q. That was the ordinary thing?

A. I should think so, yes.

Q. And in the large majority of cases, that was the routine that was followed?

A. I wouldn't know; I don't know.

Q. You don't know?

A. No, I don't know. I only know that that was my custom and my wish.

Q. And you don't know whether it was followed or not?

A. Not entirely, no.

Q. Now I believe you have stated that you don't recall the exact date when the Seminole Boat Corporation was formed; but assuming it was late in the year, 1928,—which I understand to be a fact?

A. Yes.

Q. Isn't it true that Mr. Hawkins had been looking after the boat Seminole for some months prior to that time?

A. Before the Seminole Corporation was formed?

Q. Yes, for we will say six months to a year, in that vicinity.

A. Well, I wouldn't say so. It would depend very much on where the Seminole was at the time.

Q. Well—

A. And if the Seminole were in Palm Beach, I suppose Mr. Riley would keep in touch with the Seminole and bring the bills to me, to look after. I don't know where the Seminole was, at just the date you refer to. I don't want to pin anything on Hawkins particularly.

Q. Well, we are not trying to pin anything on Mr. Hawkins, we are just trying to find out. Mr. Phipps, I think counsel won't object to my saying that it is in evidence that beginning, I believe it was in April of 1928, the Seminole was—or approximately that time, the Seminole was in storage at Pilkington's.

Mr. Matteson:
July.

Q. I was thinking it was early, earlier than that; and that Mr. Simmon or Simon, I don't remember which way they pronounce it, actually looked after the details through authority from Mr. Hawkins—was it Mr. Scott?

A. I don't know.

Q. Mr. Scott or Mr. Hawkins, I am not sure which. Now they didn't submit the bills at that time to you for your approval, did they?

A. Oh, yes. You are talking before the Seminole was incorporated?

Q. Yes.

A. Oh, yes, sir; I think the bills were then sent to Palm Beach, when we were there, for our approval.

Q. And the bills for July and August storage, for instance, for the year 1928, prior to the incorporation, you think those were sent to you?

A. Haven't you got them?

Q. I believe that they are in evidence.

A. I don't want to say yes or no, because I don't know.

Q. All right then, you don't know. That is the point I am getting at, Mr. Phipps.

Q. I should think that they had my o. k. on them; that's what I think, or Mr. H. C. Phipps' o. k.

Mr. Underwood:

We have the bills for July and August, here.

Q. All right, sir; there seems to be a bill for July; does that have your o. k. on it, or that of your brother?

A. No. That's mine, the other is my brother.

Mr. Underwood:

The witness refers to—

Q. The bill from Pilkington dated July 31, 1928.

Mr. Underwood:

Witness points to the two lines under the words "Distribution".

Q. J. S. Phipps, 29.1, H. C. Phipps, 29.16.—Now then neither you nor your brother o. k.'d that bill, did you?

A. I don't see it on there.

Q. And I refer you to the bill for August 31, 1928 for the Pilkington storage, and ask you if either you or your brother o. k.'d that bill.

A. No, the distribution is the same though.

Q. The distribution is there, I understand that.

A. 42.15 and H. C. Phipps 42.15. But I don't see it on here. Have you any that have the o. k.?

Q. I couldn't answer you Mr. Phipps; they are here and I don't remember much more about that than you do. But I think there are a relatively few, but how many or how few I wouldn't want to say. Now then, after the corporation was formed, as I understand it, whenever there was a deficit in the ordinary and usual expenses of storage, repairs, upkeep and so forth, that was just as these storage bills I have just shown you, divided equally between you and your brother; is that true?

A. Whenever there was a deficit, yes.

Q. Now then the routine was approximately this, was it not: That the bills would be paid either by the Boulevard Mortgage Company or the Palm Beach Company and then the disbursing Company would be reimbursed by you and your brother; is that correct?

A. Well, did the Seminole have its own bank account?

Q. You mean the Seminole Boat Corporation?

A. Yes.

Q. I don't mind answering your question; it is in evidence that up until sometime—I have forgotten the exact date, perhaps in 1931, I believe, it did have a bank ac-

count, at which time the bank account was closed; and that while it had a bank account, if there was a deficit, that deficit was made up by a check from the Boulevard Mortgage Company or the Palm Beach Company, as the case might be, to the Seminole Boat Company, and thus disbursed. But after that bank account was closed, the disbursements were made either by the Boulevard Mortgage Company or the Palm Beach Company. Now are you not familiar with that deal?

A. I don't remember how the disbursements were made. Let's see, what was I going to say? I don't know how the disbursements were made, but annually or in some long periods, when they were built up, then we would reimburse the account. Is that what you wanted to know?

Q. That is what I am trying to get at, that in the first instance it would be paid by someone other than yourself, but ultimately you and your brother reimbursed the disbursing company for these deficits.

A. If there was a deficit.

Q. Yes, sir, when there was a deficit.

A. And not necessarily promptly.

Q. I understand that. So that the situation was this: That before the corporation was reimbursed, you and your brother directly absorbed any deficit, is that right?

A. Why, I don't know what you mean by, directly absorbed.

Q. Well, you, each of you paid your half of it, didn't you?

A. Perhaps once a year.

Q. Well, I mean eventually. I will put it this way. That prior to the incorporation, you and your brother periodically absorbed such deficit as there might be; is that right?

A. I think that is correct.

Q. And subsequent to the incorporation, you and your brother periodically absorbed such deficits as there might be; isn't that true?

A. I think that is true.

Q. And the only distinction in the method would be, that, prior to the incorporation, the bill was paid either by the Boulevard Mortgage Company or the Palm Beach Company, or perhaps some other of your family corporations, and reimbursement made to this disbursing corporation; and after the incorporation, it passed through the hand of one more of your corporations, to which the Seminole Boat Company, and that's the only difference, isn't it?

A. No, that is not correct.

Q. Will you point out wherein our assumption is not correct?

A. Before the corporation was formed, the Seminole Boat Corporation was formed, as I said, my brother and I paid the bills, and I should think more promptly, because—anyway before we always,—I won't say always; we usually, or we should have put our initials, o. k. on the bills. Now whether that was always done by us, I don't know, but that was our intention, and that is what we usually do with our bills at home. After the incorporation was formed, I felt I had nothing to do with it until the end of the year, or the end of a certain period, and then my brother and I, or my sister and I, would pay the deficit 50-50.

Q. But in respect to its ultimately being paid by the individuals, first you and your brother, and later you and your sister, the only difference in method of payment, other than perhaps o. k.'ing the bills was—

A. But that was a big difference.

Q. All right, we understand that difference, and I am getting at another point now: That in the first instance the bills would be paid, we will say, by Boulevard Mort-

gage Company,—part of it; and part of it by the Palm Beach Company; and periodically you and your brother would reimburse that company. That is the way it was done, wasn't it?

A. Well, it was paid by somebody, and we would reimburse them.

Q. And after the incorporation, it was also paid by somebody, and you reimbursed them, wasn't it?

A. Well, that depends. We wouldn't reimburse them if we didn't know—the difference is that before the corporation was formed I was much more careful; I looked into it just the same as I would about the Iolanthe or my boat or anything that I had to pay,—or my butchers' bills, I go through the items. After the corporation was formed I left it entirely to them directors of the corporation, what they should order, what they should pay. I don't think they ever asked me. You said they had a limit of \$500.00. I don't remember their asking me for approval. Now you want to know the difference and I am trying to tell you.

Q. Go ahead.

A. So that there is a difference. Perhaps periodically or some months, if there was a deficit, and my brother and I were the owners of the stock of the corporation, or my sister and I were the owners of the stock, we would pay, in proportion to our ownership, which was 50-50, each owning a half interest.

Q. And in one instance—then the only difference would be a deficit would occur, with your approval and you would pay it and in the other instance a deficit would occur without your approval and you would pay it? Is that the difference?

A. That is not the way I looked at it. In one case I would look over the items; in the second case, if there was a deficit, I wouldn't look to see where the deficit arose, I didn't have anything to do with it. I had entire

reliance anyway—the directors, or the management of the Seminole Boat Company made all those payments and if they told me that the Seminole was in the red and they needed some cash, my brother and I would pay it, because we were the stockholders; and what would happen if we didn't pay it? The boat would be put up for sale, wouldn't it. Just imagine what would happen.

Q. That would be whether you or the corporation were the owner, isn't that true?

A. Yes, and that is why at certain times,—but when we were the owners we looked into the figures; and when we weren't owners except stockholders, we left it to the directors of the company. And they say that they had a limit of \$500.00, or some limit, I don't know, because I haven't looked at those items at all, I don't recall the items that they paid, except the storage items which you showed me this morning; I know of those.

Q. But in either instance, you and your brother absorbed the deficit, didn't you?

A. Now we weren't responsible, but we did pay it. Isn't there a difference there?

Q. Well, you did pay it, anyway?

A. Well, I think so; I think our credit is all right. But I don't know, that is supposition.

Q. Now then as I understand it, after the Boat Corporation was organized, save for the detail of paying this deficit, you had nothing to do with it; is that right?

A. I think that's right.

Q. And you were not consulted, as I understand it, at all, about what it might do or might not do, am I right?

A. Well, you mean about a charter?

Q. Let's take the question broadly as it was asked.

(The question was read.)

A. That is correct.

Q. Then when you testified this morning with reference to this Prigg boat, that you notified Mr. Hawkins that you and your sister,—to use your exact words, had decided to have the Prigg boat for Seminole, that was an exception to the rule, was it?

A. To what rule? To buy the Prigg boat? But I didn't make the rule, that they didn't buy anything; there was a limit. But Hawkins told me that the Seminole needed—or told Mrs. Guest—no, told me, said "The Seminole needs a tender, and there is Prigg boat for sale which I think would be very suitable." I saw the Prigg Boat—you don't want to hear it?

Q. Yes, I want to hear it; I am listening with great interest.

A. I saw the Prigg boat, and I told Hawkins that if the Seminole Company didn't want it I would take it. And I asked my sister if the Seminole Company wanted it and she said yes, and then I told Hawkins that it belonged to the Seminole Boat Company.

Q. Then in that instance, you and your sister, being then the stockholders, definitely decided what the Seminole Boat Company would do, didn't you?

A. Well, I think in that case; I call that rather major; I forget what it cost, but in that case he was free to ask us. If we had to have a tender for the Seminole, we would have to buy it for the Seminole in order to charter; I mean, if the Seminole was short of equipment, the man would go ahead and buy the equipment necessary to make a charter; I saw the boat, but I think it was a superficial thing to ask me if I wanted it.

Q. Did the corporation make any report to you as one of its stockholders of what it had done?

A. You mean, the minutes?

Q. No; make any report of its business transactions.

A. Not necessarily.

Q. Well, I mean, did it ever?

A. As a report?

Q. Written or verbal.

A. I don't know of any.

Q. As I understand it the principal and only business of the Seminole Boat Company was to charter the boat Seminole for profit?

A. That's right.

Q. Now then along in these years, 1931 and '32 and '33 and '34, you and your brother paid quite substantial deficits of the Seminole Boat Company, did you not? Running into a good many thousand dollars?

A. No, I don't know; but I tell you if I did, there was a good reason for it. Do you remember 1930 and '31 and '32 and '33? You couldn't charter a boat; they would give it to you.

Q. Now then—well, did you pay substantial deficits?

A. I was very disappointed and so was Baker; so was Mr. H. C. Phipps; I believe we were all disappointed.

Q. I assume that is true, but the question I asked you was this, and these explanations we have already had, if you will pardon me for saying so, if you will just listen to the question I ask and try to confine your answer to that; and then I don't mind your making any explanation you want. Now the question is that during these years, during each year, maybe once or more during the year, substantial deficits for the Seminole Boat Company were paid by you?

A. I don't know.

Q. Were you ever made aware that never after April 1st, 1930 was a single penny paid into the Seminole Boat Company for charter or otherwise, except from contributions from you and the other stockholders?

A. Why, I didn't know.

Q. You didn't know that?

A. No. It sounds foolish, but I didn't know; I didn't watch those accounts. They were taken care of by people I trusted.

Q. That is exactly what I am trying to get at.

A. How do you mean, you are trying to get at? They were taken care of. I am a stockholder in that company; I have good officers, good directors, and if they couldn't make the boat pay, if they spend out moneys for me—

Q. You and your brother, while you were the stockholders, indicated the persons who you desired to act as officers and directors of that company, didn't you?

A. Yes.

Q. And as a matter of fact, these persons that you nominated whether formally or informally, were the managers and assistant managers of your offices and properties here, isn't that true?

A. Of all the family offices.

Q. Well, I am referring to your family generally.

A. You mean, my brothers and sisters?

Q. Right.

A. They were the officers of the properties.

Q. And as such were merely your nominees; that is true, isn't it?

A. No, I don't think so. Well now, let me think about that: We as stockholders, selected those directors and officers; in that way they were our nominees.

Q. And you knew of course that these directors, serving at your suggestion, would, in respect to the Seminole, do exactly what you and your brothers desired them to do, didn't you?

A. Well, I hoped they would, but I didn't know what was in their minds.

Q. Well, you knew that they would, didn't you?

A. How do I know? Do you know what the directors or officers of any company will do? I trusted them.

Q. I can answer that question, if you want me to.

A. No, that is all right.

Q. As a matter of fact, if these men whom you and your brother selected to officer and direct this corporation, owned exclusively by the two of you,—if you and your

brother directed them to do anything and they didn't do it, you would have gotten somebody else in their place, wouldn't you?

A. No, not necessarily. They would do the right thing, and if there was something I didn't like, they would still do the right thing; they were independent, is what I wanted to convey to you.

Q. Now then do you—

Mr. Underwood:

May he finish?

A. They were independent, they were officers of the company and responsible to the company; they spent money for the company, and we were the stockholders. Now if they did something that we didn't approve, we wouldn't necessarily fire them; because they would likely have a good reason for doing it.

Q. Now that was not the question I asked.

A. Well, I am sorry.

Q. I asked if you and your brother, while you were the stockholders, directed these officers to do something, with reference to the Seminole and they didn't do it, you would have gotten someone else in their place, wouldn't you?

Mr. Underwood:

If your Honor please, I object to that as argumentative, speculative, already covered.

The Court:

Well, in a way I am inclined to agree with you; but it is cross examination. I don't want to unduly go over it and over it, but I think it would be wrong to sustain the objection so I overrule it.

(The last question was read.)

A. Unless they had a very good reason for not doing it.

Q. And you would have decided whether they had a good reason or not, wouldn't you?

A. My brother and I together would decide whether it was a good reason. Well, I can't imagine their not doing it without a good reason.

Q. I can't either. Now as a matter of fact, Mr. Phipps, didn't they, with considerable frequency, discuss the Seminole with you?

A. No. I didn't know,—you told me the Seminole had been idle four years; I didn't know it was four years.

Q. Wasn't there ever one occasion when they wanted to have a general overhaul of the motors, that they consulted you and your brother about that—or one or either of you?

A. No, I never heard of such occasion.

Q. You never heard of such a thing?

A. No; and in that case they would have gone ahead; and if I told them not to, still they might do it anyhow. Well, let's not go into argument.

Q. Now then, if I am wrong in my dates, please correct me, but my recollection is that this morning you stated that you became aware of the fact that they were paying John Thomas' hospital bills approximately a month, as I recall it, after the accident. Am I right?

A. Well, I might have said—I said a month or some considerable time. It wasn't immediately after the accident, but I became aware that they were paying them.

Q. And you approved those payments, did you?

A. Yes.

Q. Do you know whether these payments were called to the attention of your brother?

A. Oh yes.

Q. And he approved of them?

A. Oh yes.

Mr. Underwood:

Do you mean his brother or sister, Mr. Botts?

Mr. Botts:

I beg your pardon.

Q. I mean your sister.

A. The other stockholders.

Q. Now were you advised before you approved these payments, of the circumstance or circumstances under which Mr. Thomas met his injury?

A. I read something about it, or perhaps I was told; I have forgotten. I knew he was injured, I don't know how he was injured, I don't know where he was injured, but likely it was told me.

Q. Well, you were aware at the time when you approved these payments, that Mr. Thomas was injured?

A. Yes.

Q. In the explosion said to have happened on board the boat Seminole, were you not?

A. Well, I don't know whether he was injured in the Seminole or whether he was injured when he was outside the Seminole, among a whole lot of boats blowing up. I know he was injured at the time.

Q. Did you know for what purpose he was present at the scene of the fire?

A. I was told afterwards.

Q. You were told that he went down there to have a look at the Seminole for some purpose, were you?

A. No; I knew nothing about his going, perhaps that is why I didn't know anything about it for some time afterwards. But before I left Palm Beach I wanted a rope net put on the back of the Iolanthe; and I don't know whether I told Riley or whether I told Abel or who I told, but anyhow, I wanted a rope net on the back of the Iolanthe, and the one that was on the back of the Seminole was the kind I wanted.

Q. Exactly.

A. I didn't know this man Thomas was going down to see the Seminole, or I didn't ask him to do the work; in fact I had never known nor seen Thomas, to the best of my knowledge, but I heard afterwards that he had gone down and was injured.

Q. Well, you knew that Thomas was the man that Mr. Riley or someone for you, had arranged to put this rope with screen or whatever it was, on the Iolanthe?

A. I was told so.

Q. Yes. All right. You had been so informed, prior to the time,—or was that subsequent to the time that you authorized these payments?

A. Oh, it was at the time I authorized the payments.

Q. Then you knew when you authorized the payments that Thomas was the man with whom arrangements had been made to make these installations on the Iolanthe, is that right?

A. Thomas is the man; I think he was at Palm Beach—a Palm Beach man.

Q. Well, anyway, Thomas was the man who was trying to see what kind of a net it was, for the purpose of installing something similar on the Iolanthe?

A. Yes, sir.

Q. And you were informed that that was the reason for his presence in the vicinity of the Seminole, and resulting in his injury; is that right?

A. Since—I say, it was silly for him to go down at all. He did go down; whether he went down for a joy ride or to look at the Seminole, I don't know, but he did go down, and he was injured.

Q. All right. Now then you have stated that you approved the payment of, I believe it was \$5,000.00, to the widow of Captain Abel?

A. Yes.

Q. And as I understand it, the continuing payments that have been made from time to time to Mr. Thomas, have been with the approval of yourself and your co-stockholder; am I right?

A. No.

Q. You haven't approved those payments?

A. I didn't know they were going on.

Q. You didn't know it.

A. No.

Q. Well, have you repudiated those payments?

A. No. I only heard about them last night; I was told that they were making payments to him; I didn't know it.

Q. And you approved then the payment of the hospital bills?

A. Yes.

Q. He didn't—that—

A. That was later on, when they told me the story, as I said before, I approved some payments for Thomas, several days after the accident; and I was told that they were hospital bills and medicine.

Q. You are aware now of the approximate amount of those bills, are you?

A. No.

Q. Well, anyway, you have approved the hospital bills and doctors' bills and those kindred bills?

A. You mean to say that I approved them before they were paid? I don't think I did.

Q. No.

A. After they were paid, oh, yes.

Q. Now then, have you approved these payments to Thomas in addition to his hospital and doctors' bills?

A. Have I approved these bills—

Q. These additional payments of \$125. a month for a while, and \$75. a month for a while? Have you approved those payments?

A. No, but I do approve them, but—

Q. You approve them now?

A. Yes, I approve them.

Q. And you expect in due course to reimburse the disbursing agent for your pro-rata share, is that right?

A. Unless the disbursing agents get it from some other source. They won't now, of course.

Q. No, I don't think they will, either. So the point I was getting at, you want to give us to understand that you approve and confirm those payments, and not repudiate them? That is what I am getting at.

A. Well, I really haven't seen those payments; now that I have been asked about that, I would like to look at them.

Q. Well, as I understand it, you said a moment ago you had approved them.

A. I approved of the hospital bills. Now wait; I haven't seen these bills except some long time after the injury, I approved those. But the accident, not any amount; I said "take care of him, take care of his hospital bill and things like that." I didn't know about these other bills; I haven't approved them nor disapproved them; I haven't repudiated them. They tell me he is getting something every week.

Q. I understand it is every month. I understood you to say just a moment ago that you do approve those payments.

A. Well, now that you have been talking to me, I would like to look at them; there might be something screwy about them, something unusual. Why are you asking me if I approve them?

Q. I just want to know.

A. I would like to look at them before I answer.

Q. Assuming that they have been payments to John Thomas since the date of the fire, over and above his doctors' and hospital bills and so forth, of \$125. a month for a time, and \$75. a month for the balance of the time,

up until at least March of this year; have you got a copy of that list that Mr. Underwood furnished here?—now here is the ledger of the Seminole Boat Company, showing—I call your attention to this, for 1937 and 1938. John Thomas, \$75. each and every month.

A. Now I would like to know really what is the matter with Thomas; I would like to see him, before I say I approve it. Wouldn't you want to?

Q. I think that is not unreasonable. Well now then do you want us to understand Mr. Phipps, that these payments to John Thomas, over and above his hospital and doctor bills, and similar bills, which I will ask you for the moment to take my word, are shown to aggregate above \$3500.—disbursed by the Palm Beach Company and charged to the Seminole Boat Company, I would like for you to tell me whether I am to understand that these payments were made without any authority, in any manner, way, shape or form, from you, or without your approval.

A. Now I want to make sure that I have the right answer to this. If you mean the original bill, that I did approve; but if you mean bills since then, I didn't know about them. And if it was for the Seminole Boat Company, it is up to the officers of the Seminole Boat Company.

Mr. Botts:

Would you mind reading him the question? I don't believe the witness understood it.

(The last question was read.)

A. Without my knowledge,—if you add that, I will say, yes.

Q. Assuming that Mr. Riley and Mr. Alley, for the Palm Beach Company, have disbursed approximately

\$3500. in payment to John Thomas over and above medical and hospital attendance, do I understand you to say that those are without your approval?

A. They are.

Q. When you ascertained, which I understand was only a day or two ago, that these payments had been made, did you criticize Mr. Riley and Mr. Alley for making those payments?

A. I only ascertained that this moment; I didn't know; I heard that they had paid something, but the amounts, I had no idea what the amounts were until you read them out to me.

Q. Well, when you found out they had been making any of these payments, did you criticize them?

A. No.

Q. As a matter of fact now, didn't you tacitly approve those payments?

A. No; I didn't know anything about the payments.

Q. When you learned about them, didn't you—

A. Well, I have only learned the amount this last moment, when you showed me the books. Before that I heard they were paying John Thomas something, but I don't know whether it was \$5. a week or what it was.

Q. How long ago was it that you heard they were paying John Thomas something?

A. Last night.

Q. And they didn't even tell you then, the amount?

A. No.

Q. Well, did you approve that,—those payments?

A. Why, I didn't say yes or not.

Q. All right. Did they tell you, Mr. Phipps, that they had made payments totaling more than \$7,200. to or for the benefit of John Thomas, on account of hospital bills, doctors' bills, and these additional payments, and have not taken one scratch of a pen from John Thomas by way of release or otherwise? Did they tell you that?

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A. No.

Q. Do you approve or disapprove that?

A. Well, I don't know; I don't know the facts.

Mr. Botts:

Have you got that release for me yet?

Mr. Alley:

I have a reformed copy of it. I don't have the original.

Mr. Botts:

You are satisfied that it is an accurate copy, are you?

Mr. Alley:

Yes.

Mr. Botts:

May I see it?

(Informal recess for two minutes was taken, following which the preceding testimony was read.)

Q. If Mr. Alley has testified that he did make those payments, and has taken no receipt, release, or anything of that kind, do you approve that or disapprove it?

Mr. Underwood:

I think if your Honor please, I object to that. I think he has covered that. It is argumentative. His state of mind today is unimportant on the issues in this case.

The Court:

I am inclined to agree with that. I think you have covered that; I mean, that particular question. I think this question of approval or disapproval is a repetition. . . .

Q. I understand that when you went down on this fishing trip down at—

A. Which fishing trip, please?

Q. The last one, in April of '35; that you knew that the various fishing boats were being supplied with gasoline from the tanks of the Seminole.

A. That is correct.

Q. As I understand it, you said you thought it was pumped?

A. Well, really I don't know how it was supplied; but that was my thought, if you would have asked me.

Q. Well, you knew then that in some method they were drawing gas from the tanks of the Seminole and delivering it to these various boats?

A. Well now, I don't know whether it was drawn from the tanks of the Seminole, or whether it was drawn from a drum on the deck of the Seminole. I really don't know.

Q. You didn't see any drum on the deck of the Seminole, did you?

A. Well, I didn't look for one, I never thought of it. But I think it probably could be, in fact it might well have been, because we have taken drums,—extra gas, that way; that is my recollection; sometime ago. So I wouldn't know how that was. I did know the Seminole supplied the fishing boats with gas; how they supplied it I don't know. It might just as well have been from a drum on the deck, or pumped out from below by a pump and put in, or perhaps direct from the pump into the boats; I don't know.

Q. You saw the fishing boat come alongside and get gas, did you?

A. No, I didn't. I don't recall of seeing it. Of course they did, but I don't recall seeing it.

Q. You knew they did, but you don't at this time recall the actual circumstances; is that the idea?

A. I never recalled the circumstances, because I know the boats got gas from the Seminole, but I believe they were using gas when I was asleep, I don't know, or perhaps at night. I don't remember there being gassed, but you asked me if they got gas from the Seminole. That is the only place they could get it from.

Q. Now my understanding is that in the first instance the bills for the Seminole were o. k'd by your private secretary, Mr. Robbins?

A. What time are you speaking of, please?

Q. Early, before the corporation.

A. Before the incorporation? They were paid by him?

Q. I think you said that they were approved by him, but I want to get that straight.

A. Robbins has been with me for perhaps twenty years; he has approved a lot of bills for me. But you will have to place the time. I wouldn't know who would approve them.

Q. Well, there was a time when Robbins approved these bills; that is what I am getting at?

A. Yes, that is correct.

Q. Now then what I want to ask—

A. What bills do you mean, please?

Q. Bills for the Seminole. You tell me.

A. I don't know what you are referring to.

Q. I want you to tell me what bills from the Seminole he did approve.

A. I don't know.

Q. Any bill that he did approve, was paid, is that the idea?

A. Yes.

Q. All right. Now then, after a time, down at Palm Beach, while your various boats were there, Mr. Riley stepped into the situation in that respect largely the same as Mr. Robbins had previously occupied, did he not?

A. No.

Q. He didn't?

A. No. Mr. Riley had entirely a different position in Palm Beach than Mr. Robbins in New York. Mr. Riley used to buy and sell real estate for me, he manages my real estate in Palm Beach now; and he was doing the same service for me as Paul Scott or any of the people in our organization, as we said before; Roy Hawkins, and others.

Q. Well, didn't Mr. Riley look after a great deal of the detail of approving accounts for you in connection with your boats and your properties as well?

A. What time are you speaking of, please?

Q. Well, we will say in the last five years.

A. That is after the Seminole Boat Company was formed?

Q. Yes.

A. Well, I don't believe the Seminole was up there in the last five years, was it?

Q. Now I am away, just a little bit, from the Seminole.

A. He does do that, in regard to the Clip, shall we say,—or am I not to mention boats? But the Clip he pays,—I am not sure, but anyway he would look after the Clip and talk to me about the Clip.

Q. And the same with reference to the Iolanthe?

A. I haven't got the Iolanthe.

Q. I mean, while you owned the Iolanthe?

A. Well, that is so many years ago since it was at Palm Beach; I don't think it was; I think the Iolanthe was really managed by the Captain of the Iolanthe. I don't think Riley ever had anything to do with it.

Q. Now Mr. Phipps, you spend a substantial proportion of each year at Palm Beach, do you not?

A. I do, yes.

Q. Are the officers of the Palm Beach Company, in Palm Beach or West Palm Beach?

Mr. Underwood:

Office or the officers? I didn't hear.

Q. The offices.

Mr. Underwood:

The structure?

Q. The structure in which their headquarters' offices are.

A. Well, I don't believe there is a Palm Beach Company now; I think it is called Phipps Properties.

Q. I think they say it is the Bessemer Properties.

Mr. Underwood:

It is clear in the record; it is the offices in Palm Beach.

Q. The offices that your companies occupy in Palm Beach County, are located in the city of Palm Beach, are they not?

A. Yes.

Q. Do you give as much attention to the detail of the operation of those companies down there as you do to the payment of your bill for your butcher, as you have indicated a while ago?

A. No, I don't.

Q. You give more attention to the payment of your butcher, than you do the operation of your business?

A. I do, yes, sir. I have practically retired from business, Mr. Botts; I try to relieve myself as much as possible.

Q. And you have a private office however, in the headquarters building at Palm Beach, haven't you?

A. It is not a private office, but I usually used it; my brother has used it if he is there, or my sister would use it. But there is one room that I generally sit in. It is not my office.

Q. There is no office assigned to you?

A. No office assigned to me, no.

Q. There is no office assigned to your brother?

A. No.

Q. Aren't there two private offices there that are reserved primarily for the use of you and your brother?

A. No. Well, I say, we are there so seldom, in the office it would be a waste.

Q. And you—

A. I want to modify that; I go there every week, two or three times a week, but I don't spend long periods in the office. Is that what you want?

A. That is what I was trying to ascertain. Mr. Phipps, I have just been handed what we will assume is a correct copy of the release executed by Mrs. Abel, on the payment of the \$5,000. and we will treat that as if it was the original, because I am sure that it is accurate.

A. May I read it?

Q. Yes, certainly.

A. Do you want me to read it all?

Q. Just as much as you like of it.

A. That is all right with me; that is all right as far as I am concerned.

Q. Do you know whether you have reimbursed the Palm Beach Company for this payment or not?

A. I never saw that before.

Q. You stated, I believe, that you approved the payment to Mrs. Abel before it was made.

A. Yes, but I never saw that release.

Q. Did you reimburse the Palm Beach Company for any portion of that, or the Bessemer Properties, whichever corporation made the disbursement, for any portion of that \$5,000.00 outlay?

A. I don't know.

Q. If it was done it was a routine matter there in your accounting department, is that right?

A. Well, I approved of the gift; perhaps you will find that I have okayed it and they paid it, but I never saw the bill for it; I approved the gift to Mrs. Abel, yes.

Q. The point I am trying to get at is: do you know whether or not one of these periodical periods of reimbursement came around and you reimbursed the disbursing authority for this expenditure, do you know?

A. I don't know.

Q. You may or you may not have?

A. I won't say; I don't know.

Q. Then if you have not done it, Mr. Phipps, you will do it in the future, of course, I take it?

A. I think so. I haven't seen any checks to—

Q. Now, Mr. Phipps, with reference to these payments to John Thomas, referring now to that portion of them which you say you approved, that is, the hospital and doctors' bills. You have not yet reimbursed the disbursing authority for those either, I take it?

A. Do you know? I don't know.

Q. I don't.

A. I don't.

Q. Now you spoke of the amount paid to Mrs. Abel as a gift. Would you mind telling us into what category you place the payments to John Thomas?

A. Well, I haven't placed John Thomas at all, except I didn't feel that I was under any legal liability to pay it, but I felt sorry for the man, just the same as another. For Mrs. Abel I was very sorry for her and it was a gift, and I didn't know I had received that release.

Q. What about the payments to John Thomas; did you treat them as a gift?

A. Well, I never had thought of it; I would say that the hospital part was a gift certainly; it was the reasonable and kindly thing to do. Now, I didn't do that because I thought I was going to be sued or was under any legal liability to pay that. It never was brought to my attention and I never thought I was liable.

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Q. As far as you know no legal demand was ever made by John Thomas?

A. Never; not to my knowledge.

Q. John Thomas had never worked for you, had he?

A. No, I had never seen him.

Q. You didn't know him?

A. No.

Q. Can you give us any reason then why you would authorize the making of these payments, running into this considerable amount, to a man towards whom you now disclaim any responsibility?

A. Well, I thought he had awful bad luck. He really wasn't on my business when he was hurt. You know more about "agency" than I do. He wasn't on there to carry out any orders. I don't know what Thomas is; is he a carpenter or sail maker or something in Palm Beach? I just don't know. In other words, he went down there and was hurt. There were two people hurt; one was John Thomas and one was Abel, and I felt a moral obligation to help them. That is as much as I can tell you.

Q. You felt a moral obligation because the fire originated on your boat?

A. I did not. I don't believe it, and that is another point or question. I have heard so many theories about the origin of that fire and I don't think it is clear at all that it came from my boat.

Q. Without any feeling of responsibility you made these payments to John Thomas?

A. That is correct.

Q. You said, however, that you felt a moral responsibility.

A. I felt a charitable responsibility. How would you say it? I felt sorry for Mrs. Abel.

Q. I would rather not answer that question.

A. She was a school teacher; she lost her husband; her husband was a nice fellow; he was a friend of mine and I had been fishing with him.

Q. That is with reference to Mr. Abel?

A. All right.

Q. Now I am talking about John Thomas. Did you owe any legal responsibility to him; did you feel any legal responsibility to him?

A. Absolutely none.

Q. You felt no legal responsibility but you made these payments, as I understand it, as a sort of moral responsibility?

A. Not moral; I really made these as a charitable responsibility. The man was down there in the hospital and he was badly hurt. I didn't know that that amounted to so much, but I approved of the hospital bills and the medicines; I didn't know what they did amount to, but it wasn't very much, was it?

Q. About \$3500.00.

A. Hospital bills?

Q. Hospital and doctors' bills.

A. I didn't appreciate that at all. I never saw Mr. Thomas, but I will sometime; I would like to talk to him about it.

Mr. Botts:

That is all.

(By Mr. Matteson):

Q. I want to ask you just a few questions: did you personally pay any of this \$5,000.00 that was given to Mrs. Abel?

A. Not that I know of; that might have been paid, but I didn't know about it.

Q. You personally didn't have anything to do with that?

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A. No, but I approved that payment, because I was asked.

Q. Did you approve the charging of it to the Seminole Boat Company?

A. I don't think that I did—Oh—I think that is where it belongs.

Q. In this release that was made I notice—

A. If the boat belonged to the Seminole Boat Company I don't think I would have to pay the whole thing; I think my sister and the other stockholder would have to pay a share of it anyway.

Q. I see. You personally, as well as your sister, are named as parties released in this release, isn't that the fact?

A. I never saw it before.

Q. You see your names there, don't you?

A. I read it just now and I think it is all right, but I think that is the first time I have seen it.

Q. It does release you personally, among others?

A. I don't know.

Mr. Underwood:

I object to that unless the document goes in; it speaks for itself. If Mr. Matteson wants to question about that document, the document should first go in.

Mr. Matteson:

All right; I will put it in.

Mr. Underwood:

Can we agree on the persons who are named as being released?

Mr. Matteson:

I think we can, but perhaps the shortest thing is just to mark this as an exhibit.

The Court:

Let it be admitted.

(Thereupon the release above referred to was marked Libelants' Exhibit 114.)

(By Mr. Matteson):

One more question, Mr. Phipps, please: you spoke of the management of the Iolanthe being with the captain.

A. Yes.

Q. Who was the Captain?

Mr. Underwood:

At what time?

A. I had a number of captains.

Q. What captains were you referring to when you answered?

A. Any captain.

Q. Who have those captains been?

A. I would not like to say without refreshing my memory. I really don't know whether Abel was a captain or whether Bryant was a captain. I think I had a number of captains at different times.

Mr. Matteson:

That is all.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Phipps, there is just one subject about which I want to ask you a question or two, and that is the

registering of the Seminole with the New York Yacht Club in your name. When did you first find out that the Seminole was registered in the New York Yacht Club in your name?

A. Last night.

Q. Did you have anything to do with its being registered in your name at any time?

A. I don't remember.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. Wait a minute. In these interrogatories to which you swore, Mr. Phipps, did you say that you didn't know that was the fact?

A. Show me, please. Did I say I was a member of the New York Yacht Club?

Mr. Underwood:

This interrogatory doesn't say "New York Yacht Club".

Mr. Botts:

Doesn't it?

Mr. Underwood:

It does not.

Mr. Matteson:

Here it is.

The Witness:

"The Seminole was registered at only one club until 1921; it was registered in the name of Henry C. Phipps.

from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club".

By Mr. Botts):

Q. What club were you referring to there?

A. I must have been referring to the New York Yacht Club, because that is the only club—oh, I have been members of other yacht clubs. I was a member in the—I have been a member of several yacht clubs.

Q. When you signed these answers to interrogatories you knew what yacht club you were talking about, didn't you?

A. I don't know what I had in mind; I don't know how I happened to do that. I don't know why I said it was registered there. If you want me to be frank, I didn't know it was registered in the New York Club.

Q. Do I understand, Mr. Phipps, that these answers were prepared by someone else and submitted to you and that you casually read them over and signed them; is that the way it came about?

A. No.

Q. You either knew or you didn't know, Mr. Phipps; now, Mr. Phipps, did you know when you signed those what yacht club you were referring to?

Mr. Underwood:

If your Honor please, I think this cross examination is unintentionally somewhat unfair, because of the Court's ruling when these interrogatories came up; the Court ruled that Mr. Phipps was required to give certain information which wasn't at the time within his knowledge. I think perhaps your Honor will recall that we took exceptions to a number of these interrogatories (I don't remember now which ones). Our exceptions were overruled and Mr. Phipps was required to make answer, and persons on his behalf investigated the facts and—

Mr. Botts:

Do you mean to suggest that Mr. Phipps didn't know what yacht clubs he belonged to?

Mr. Underwood:

I think this line of cross examination is unfair.

The Witness:

I belonged to several yacht clubs; perhaps I can refresh my memory. I don't belong to any yacht clubs now that I know of.

Mr. Botts:

I do not see anything unfair about asking a man to tell the source of his information that he has sworn to.

The Court:

I think that he can answer the question. Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. If I was referring to—I must have been referring to the New York Yacht Club because that is the only club that I should think—it is the fact that I was referring to the New York Yacht Club; I had forgotten that that was in there, and the last time I saw this I was surprised to find the "New York Yacht Club" in there; it just escaped my memory. When I read that I knew the Seminole was registered in a yacht club at one time, because the Seminole flew the New York Yacht Club flag.

Q. Then you have been aboard the Seminole when she has flown the New York Yacht Club flag?

A. Yes.

Q. And you knew at that time that you were a member of the New York Yacht Club?

A. I don't know what time that was; I haven't been a member for a good many years, and Mr. H. C. Phipps has not been a member for a good many years.

Q. Well, I guess you were mistaken when you said that you didn't know until last night.

A. I will admit that it surprised me; it just escaped my memory. I was not trying to deceive you in any way, but when I was told that it was registered in the New York Yacht Club I was surprised in my own mind.

Q. As to matters of that kind, happening sometime ago, your memory is not entirely trustworthy sometimes, is that right?

A. I would not like to say that, but I am afraid that it might be sometimes with all of us. I sometimes make mistakes, I am sure.

Q. And—

A. Just go ahead and ask me.

Mr. Botts:

I think that is all, Mr. Phipps.

Mr. Matteson:

Nothing further.

Mr. Underwood:

That is all.

(Witness excused.)

2438 WILLIAM P. BAKER was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. William P. Baker.

Q. Where do you live?

A. 428 S. W. 23rd Road, Miami.

Q. What is your business?

A. Boatman.

Q. How long have you been following the sea?

A. Thirty-five or thirty-eight years.

Q. You say your business now is boatman?

A. Yes.

Q. What kind of boatman are you now?

A. I am in the charter boat business.

Q. How long have you been in that business with your present boat?

A. Since 1930, about nine years.

Q. What type of boat is your present boat?

A. It is a house-boat.

Q. What are her dimensions?

A. 65 by 20, I think.

Q. Is that your year-around employment now or are you employed otherwise at sometime in the year?

A. I go on another boat in the north in the summer.

Q. By whom are you employed in the summer?

A. By Judge Brower in New York.

Q. How long have you been employed by him?

A. Ten years.

Q. When did you first have anything to do with the Seminole as a part of her crew in any way?

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A. In 1928, I guess, or 1927.

Q. I take it that the year is a little indefinite in your mind?

A. 1927 or 1928 is when I first went on the Seminole.

Q. What was your employment on her at the beginning?

A. Captain.

Q. Were you employed on her at times subsequent to that?

A. Yes.

Q. Were you employed on her for any continuous length of time?

A. One year at one time, and two years at another time.

The Court:

You will have to speak louder.

The Witness:

About two years one time.

Q. And following that, how often?

A. Just over short periods.

Q. From time to time?

A. From time to time, yes.

Q. You were captain of her on her final trip in the spring of 1935?

A. Yes, sir.

Q. Are you familiar with the layout in a general way of the gasoline tanks in the Seminole?

A. Yes, in a fair way, I guess.

Q. Did you ever serve as engineer on her?

A. No, sir.

Q. Can you tell me what there is beneath the tanks of the Seminole?

A. Well, there was a drain pan under there, an iron drain pan that had a wooden base under it for those tanks to set in.

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Q. How many such pans were there?

A. Two; two tanks to each set of pans; four tanks in all.

Q. Do you know whether or not there was any way for any liquid that might collect in these pans to get out?

A. Yes, they had drains.

Q. How did they drain?

A. The one on the starboard side I know had a three-eighths inch galvanized pipe running out of there and running overboard.

Q. How do you know that?

A. We traced it one time. The one that came out of the port side, I never saw that one; I never had occasion to go in there.

Q. How did the two pipes that you speak of compare in size?

A. Both the same, I think; both three-eighths inch galvanized pipes.

Q. You traced the starboard one but never the port one?

A. Never the port one.

Q. Were you in the engineroom of the Seminole on that final spring trip of 1935?

A. Yes, sir.

Q. What did you do down there in the way of inspection, if anything?

A. Several times I was in the engineroom; on the last trip that we are talking about? You see I was on her that last trip about ten or twelve days, I guess.

Q. Do you remember being on her before that year?

A. Yes, I went up to Lauderdale and brought her out of Lauderdale.

Q. Where to?

A. Miami.

Q. On that occasion were you in the engineroom?

A. Yes, sir.

Q. On these two occasions what did you do in the way of making any inspection of the Seminole?

A. I naturally would go in the engineroom and with the engineer we would inspect the pipes and lines and wires and so forth.

Q. What did your inspection of the gasoline equipment disclose?

A. It never disclosed anything that I thought in my mind was any way out of reason; there was never any leaks that we could ever find.

Q. Did you observe any leaks anywhere in that gasoline system?

A. One time we overhauled a pipe that was leaking when we were filling gas.

Q. When was that?

A. 1935; on that last trip.

Q. Where was the boat?

A. At the Royal Palm Dock.

Q. That is the only leak you know about?

A. Yes.

Q. What type of switches was there on the Seminole?

A. Open knife switches.

Q. From your experience will you tell me whether or not it is customary for boats of that class to have that type of switch in the engineroom?

A. On all boats that I have been on it is customary, and always on all small boats.

Q. The evidence shows, Captain Baker, that there was a drain line for gasoline in the engineroom of the Seminole, with two valves on the end; do you remember that?

A. Yes.

Q. From your experience with boats of that class, will you tell me whether or not that is customary.

Mr. Matteson:

It seems that I will have to object to that. I do not think any amount of custom can justify an unsafe practice. I object to the question as to whether it is customary or not.

The Court:

Well, I think he can give his experience. I will overrule the objection.

A. Yes, that is customary on all boats I have ever been on; I never have been on a boat where you couldn't get gas out of the tanks in the engineroom.

Q. Is there any reason why on the Seminole that it is important to have a source of gasoline supply apart from the thought of supplying fishing boats?

A. Getting gas for priming your engines and supplying the fish boats; that is all I know that gas is taken for.

Q. Assume that your motors stall and stopped and you were near a lee shore, would there be any need to have a supply of gasoline readily available in the engineroom?

A. Yes; those engines need priming at all times.

Q. What would be the reason for that; I mean the reason for the needing of the supply of gasoline.

A. To prime the engines with.

Q. What ventilation or ventilators did the engineroom of the Seminole have?

A. She had two fourteen inch cowl ventilators through the boat deck to the engineroom, and it had eight two inch pipes with goose necks coming out of the bilge, and up alongside of the engineroom.

Q. Where did they come out of the deck?

A. Right at the engineroom deck there; it was raised about six inches above the main deck.

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Q. What windows did she have?

A. She had one window in the port side that went right outside, and one on the starboard side that went into an alleyway.

Q. From your experience, Captain, did you ever observe any lack of proper ventilation there?

A. No, sir.

Q. Have you had occasion to go to the Seminole at Pilkington's and take her out of storage?

A. Several times.

Q. On those occasions do you remember when you went into the engineroom?

A. I always went in the engineroom.

Q. What have you observed on those occasions about the ventilation in the engineroom?

A. In storing a boat we always leave these windows open, and when there was cowl ventilators it always seemed that there was ample ventilation there at all times.

Q. In your employment on the Seminole who was it that had the dealings with you that resulted in your engagement?

A. Mr. Hawkins mainly.

Q. Did you ever receive any instructions or were you ever employed by Mr. Phipps?

Q. Do you remember Mr. Scott?

A. Very well.

Q. Did he ever participate in that?

A. Yes, sir.

Q. Anybody else?

A. Not as to my employment, no, sir.

Q. Coming down to the cruise of 1935, who was it that made the arrangements with you?

A. Mr. Hawkins.

Q. What was done about the crew?

A. I was down on the Keys on my small boat, and a part of the crew that was on the Seminole was on her

when I brought her down from Ft. Lauderdale; the engineer was still on; I don't know whether Bryant was there or not, but Bryant was on the trip, and I took the balance of the crew off of my boat.

Q. You provided some of the crew?

A. Yes. I provided five of the crew myself off of my boat.

Q. I take it that you do not know who made the arrangements for the others?

A. No.

Q. Do you remember what members of the Phipps family were on this cruise?

A. Mr. and Mrs. John S. Phipps and Mrs. Amy Guest, and the younger Guest, the boy; what is his name—the son—Winston, I think.

Q. During that cruise did you receive any instructions from Mr. J. S. Phipps of any character?

A. Nothing more than any charter would; we operated where they wanted to go, and that's all; just regular charter instructions.

Q. Did he give you any instructions as to the condition of the boat?

A. No, sir.

Q. Did he give you any instructions to any part of the engineroom?

A. No, sir.

Q. Where did the party leave the boat?

A. Lower Matecumbe.

Q. Did anybody give you any instructions at that time as to what to do with the boat?

A. No, sir.

Q. Do you remember anybody who was on that cruise who wasn't a member of the Phipps family?

A. There were several; Mr. Hawkins was on there at one time and Mr. Layman was on there.

Q. Did you get any instructions from either of them as to what to do with the boat?

A. Only from Mr. Hawkins to bring her back to Miami.

Q. Did he tell you anything else at that time?

A. Not that I remember.

Q. Did you later get any further instructions as to what to do with her?

A. Yes.

Q. And from whom did they come?

A. From Mr. Hawkins.

Q. What were they?

A. To take the boat to Ft. Lauderdale and lay her up.

Q. Did you get any instructions from Mr. John S. Phipps about laying the boat up in any respect at that time?

A. No, sir.

Q. Did anything occur on your way to Lauderdale with reference to the gasoline supply?

A. Well, we knew we were short of gas when we left Miami, but we thought we could make the storage shed, and when we stopped at noontime to get lunch for the four of us on the boat, we didn't stop altogether. I told the engineer to stop and he said she was pretty low in gas, and I insisted on stopping, and I told him I could stop at Ft. Lauderdale and put in gas if necessary, and he said that he thought he had enough to make the shed.

Q. Did you experience anything else on that occasion on the way up to Pilkington's basin?

A. One of the motors started quitting, started cutting up, and the engineer called me and told me that I had better handle her as fast as possible. I was handling her on one engine anyway, because one of them he thought was out of gas.

Q. What did you do about it?

A. Just operated one engine; that's all. I didn't use the other engine. I didn't "ring" the other engine at all. I don't know whether it stopped or whether it was running when we cut it off; I just don't know.

Q. About what time of the day did you arrive at Pilkington's basin?

A. Around 1:30 I would say.

Q. What did you do in the course of getting the boat ready to leave there during the balance of the time you were there?

A. We shut off the valves; shut off all water valves, shut the valves all the way off; I did that. I looked in the engineroom, forward and aft and the rest of the crew was all busy doing pretty much everything that "belonged" to be done.

Q. What part of the bilges in the Seminole did you go into that day?

A. I was all through her from stem to stern.

Q. What was the condition of those bilges?

A. Her bilges was always clean; the Seminole was a steel hull boat; she was very easy to keep clean, and she was kept clean at all times.

Q. Did you find any liquid of any sort in those bilges?

A. No.

Q. Did you smell any gasoline any place in that boat?

A. No, sir.

Q. Were you in the engineroom that afternoon?

A. Yes.

Q. What did you observe in the engineroom?

A. In laying up a boat I always take it as my responsibility for the final word, and I would always go and look over everything that I could see, and especially the gas lines and switches and so forth, and so on, as I always do when she is laid up.

Q. What did you observe about the gasoline lines?

A. All of the gasoline lines were closed when I was there, and I personally tightened every one; I put my hands in every one and tightened every valve that was in the line.

Q. The record shows that there were four tanks, each of which had a valve.

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A. Yes.

Q. Did you examine those valves?

A. Yes.

Q. How did you leave them?

A. All shut tight.

Q. The record shows that there were two valves by which gasoline could be drawn off. Did you examine those valves?

A. Yes.

Q. How did you leave them?

A. Closed.

Q. The record also shows that there were two valves, one in each motor line, designated traps; did you look at those?

A. No, sir.

Q. Who was the last person out of the engineroom that day?

A. I was.

Q. Did you observe the switches on the switch board at that time?

A. The lights were left on in the engineroom. We left the lights on so that I could see, and then I went over and pulled off the switches, the main switch; that was the last thing I did when I came out of the engineroom.

Q. Did you observe the glass gasoline gauge in the engineroom at that time?

A. Yes, two or three times that afternoon I looked at it.

Q. What did it show?

A. Nothing.

Mr. Botts:

I can't hear you; what did you say?

The Witness:

Two or three times I looked at it because I was anxious to see how long the gas would last.

By Mr. Underwood:

A. I am speaking of the time when you left the engine-room for the last time that day. Did you look at the gasoline gauge at that time?

A. We always measure the gas when we leave; it is always checked up and put in the log book. When we leave the boat we always check up to see how much was left in the boat at all times.

Q. What did you see as to the gasoline gauge at that time?

A. There was none showing whatsoever.

Q. How was the port window in the engineroom left at that time?

A. The port window was open.

Q. How about the starboard window?

A. That was open.

Q. Do you remember about the skylight?

A. No, sir, I couldn't say about that skylight; I don't remember whether it was open or not; I don't remember whether it was left down or shut at that particular time.

Q. How did you get out of the engineroom on that occasion?

A. I climbed up the ladder, the iron ladder.

Q. Through the hatch?

A. Through the hatch.

Q. Was anything done about that hatch after you got on deck?

A. It was locked.

Q. Who locked it?

A. The engineer locked it and gave me the key.

Q. How many keys did you give you?

A. He gave me one.

Q. What did you do with that key?

A. I put it with the—I had three more and I put them all together and brought them down to Mr. Hawkins at his request in Miami.

Q. When did you give those keys to Mr. Hawkins?

A. The next following morning.

Q. Do you remember whether they were separated or held together?

A. All held together on a piece of string.

Q. Now, Captain Baker, the record shows that there were two windows in the alleyway that ran along the starboard side of the engineroom. Do you recall how those windows were left when you all left the boat that day?

A. The Seminole had, besides the windows and the screens, Venetian shutters, I would take it; there were Venetian shutters, which were left about three-quarters up, I would say, all over the boat.

Q. How were the windows themselves left?

A. They were down, I think, all over the boat.

Q. Now by "down" just what do you mean?

A. That means they were open.

Q. They go down into a recess in the wall?

A. Yes, down into a recess in the wall.

Q. Did you have any conversation with Captain Pilkington that afternoon?

A. Yes, I had a little when I got off the boat.

Q. What was that conversation?

A. I told him that I was leaving the boat there and that those windows was half down, and if it came a rain (it looked like it was going to rain—that afternoon) that I wanted him to make sure that the boat was shut up. He said he couldn't put her under the shed that day, but would in a couple of days—

Q. Where did you leave the boat?

A. Left her at his dock, in front of his house, but not under the shed.

Q. Not under the shed?

A. No, sir.

Q. Did you observe any signs in Captain Pilkington's basin at any time with respect to gasoline?

A. No, sir.

Q. Were you ever advised by Captain Pilkington at all with reference to gasoline in respect of the laying up of the boat?

A. No, sir.

Q. For how many years have you in this vicinity laid boats up for summer storage?

A. Every year.

Q. For how many?

A. I would say twenty years anyway.

Q. What has been the practice as to draining tanks of the vessels being laid up for summer storage of gasoline?

A. I never personally drained the tanks in them.

Q. On the previous occasions that you laid the Seminole up?

A. Yes.

Q. Did you ever drain her tanks?

A. Never.

Q. On your own boat do you ever drain the tanks?

A. No.

Q. Do you know whether people generally drain the tanks or not?

A. There is an insurance clause in there which says you are supposed to drain them, but I know of no boats that entirely drain the tanks when they have generators on them; they leave the gas for operating those generators.

Q. These cowl ventilators that come up through the engineroom; from what place were they trimmed?

A. Trimmed?

Q. Turned.

A. On the boat deck.

Q. Out in the open, you mean?

A. Yes, sir.

Q. What time on that last occasion did you leave the Seminole; what time of the day?

A. About six o'clock.

Q. Did anybody leave with you?

A. There was four of us there; two of us came to Miami and two went to Palm Beach.

Q. I think you said that early in the year 1935—perhaps it was February—that you went up there and brought the Seminole to Miami.

A. Yes.

Q. Did you buy any gasoline to bring the Seminole to Miami?

A. I think the engineer got five gallons of gas going up? I am positive that he did get five gallons to start the motors with.

Q. Do you remember whether there was any gasoline in the tanks when you boarded the Seminole on that occasion?

A. Yes.

Q. Do you remember about how much?

A. Three hundred, I think.

Q. You mean three hundred gallons?

A. Yes.

Q. Was that showing the gauge?

A. Yes, sir.

Q. Can you tell us how that gasoline gauge was constructed; describe for us, first, the glass part itself.

A. It was a regular steam type boiler gauge with an extra heavy glass, with rods on the side.

Q. Where did those rods fit with respect to the glass part of the gauge?

A. In front of the gauge.

Q. What was their purpose?

A. To protect that gauge.

Q. Did they protect it?

A. They were still there the last time I saw it.

Q. What did you do with the log books of the Seminole when you left her in 1935?

A. Put them in the safe.

Q. Where was the safe?

A. In the Master's room—the Captain's room.

Q. Now, Captain Baker, getting back to 1929, I show you a document which has been marked Exhibit "CC"; is that your signature?

A. Yes, sir.

Q. Did you ever make a contract with the Seminole Boat Company?

A. Yes, sir.

Q. Following the making of the contract what did you do in a general way with the Seminole?

A. She was for charter as a charter boat.

Q. What did you do about that?

A. I don't know just what you mean.

Q. Did you make any charters?

A. Yes; I made several charters; I had four or five charters that winter.

Q. Who was it in the general course that made the charters?

A. I did.

Q. Who collected the charter hire?

A. I did.

Q. Did you account to anybody for that?

A. I used to account to the office mostly; mostly to Mr. Simon, who was in charge of the office up there.

Q. How long did that continue, do you remember?

A. It continued through 1930.

Q. Do you remember any charters after that?

A. No, sir; not at that particular time.

Q. Following 1930, do you know anything about chartering the Seminole?

A. I wasn't always on her; in a general way I had my own charter boat, but I would get off of her and go on the Seminole when we got a charter; several times I have been with Mr. Phipps and Mr. Moylan, of the Purity Baking Company in Chicago.

Q. Have you offered the Seminole for charter since 1930?

A. Yes, sir.

Q. During the time that you were on the Seminole what did you do about the upkeep and the maintenance of the boat insofar as authority to do things?

A. I had authority to do things, and I had an account with the Seminole Boat Corporation that I used to draw on and put money back in. As the money would come in I had that account that I could draw on.

Q. During this time who was it that decided on things you needed?

A. I did.

Q. Did you consult anybody about any of those things?

A. Usually I consulted Mr. Scott. If there was any major things I would go to Mr. Scott with them.

Q. Did you ever discuss these things with Mr. Phipps at that time?

A. No, sir.

Q. Now, Captain Baker, you have told us that you have been operating gasoline driven vessels for quite a long time. Do you know anything about any special valve for gasoline lines?

A. No, sir.

Q. Have you any opinion as to which is better, composition or ground seat valves?

A. Well, the composition seat, if it is well looked out for, is absolutely perfect. Ground seat valves (if they get anything under them) will leak, but a composition one is as good as the other, as far as I know; that's all I know.

Q. Do you remember whether the motors of the Seminole had backfire arrestors?

A. Yes.

Q. Did they?

A. Yes.

Q. When you were on her in 1935, did you experience any short circuits or any grounds in the electrical system?

A. No, sir; none was reported to me.

Q. Did you observe any?

A. No, sir.

Q. In 1935, did you see enough of the bilges in the bottom of the Seminole to be acquainted with the condition of the conduits in which the wires laid?

A. Yes.

Q. What was the condition of the wiring conduits?

A. Yes. In 1929 we put in new conduits from the batteries to the rheostat which was all the way across on the switch board.

Q. I am asking you about the condition of the conduits as you observed them in 1935.

A. They had been put in between—someone had worked on them during my absence; somebody put those in and they were in fair condition in 1935.

Q. Did you do anything in your experience on the Seminole about her electric wiring in the staterooms and above the engineroom compartment?

A. In 1929 we took off all the molding and examined all the wires that we could get to in the molding of the staterooms and the deck house and the dining room and so forth; all that we could get at.

Q. Was any part of that renewed?

A. Yes; some of it was renewed but very little.

Q. When the job was finished how did you leave it?

A. It was pretty good, I guess; I didn't have no trouble with it.

Q. From that time on did you have any trouble with it?

A. No, sir.

Q. Who did the work, what persons?

A. I helped and the engineer, Jack Otter, at that time did the majority of it.

Q. You mean the crew of the boat?

A. Yes, sir.

Q. Captain, it appears that the Seminole's gasoline filling line was bigger than the vent pipe?

A. Yes.

Q. Have you had any experience with that situation on other boats?

A. Yes; all tanks are vented on all boats; I don't know of anyone that has the same size filler-pipes as the vents.

Q. Which is usually the smaller?

A. The vents.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Baker, you did some chartering of the Seminole in the early part of 1929 and again in the early part of 1930; is that correct?

A. Yes, sir.

Q. To whom did you charter the Seminole in 1929; do you recall?

A. We did to Mrs.—

Q. Was that Ann Murdock?

A. Yes.

Q. How long did she have it?

A. About two and one half months.

Q. That was the only charter that you made in 1929, was it?

A. Yes.

Q. All right; how about 1930?

A. Yes.

Q. To whom did you charter her in 1930?

A. In 1930 to Mr. Moylan and I chartered it to Mr. Alstaire McIntosh.

Q. Those are the only two?

A. No; there is another one; there is one more.

The Reporter:

What did you say?

The Witness:

There is one more. You will have to excuse me, because in my business I have to talk very low.

By Mr. Matteson:

Q. Is that all?

A. There is one more, but I can't remember who it was just now. In 1929, at the stock crash, the boat was too big for charter business.

Q. So you had two charters that you can't remember in 1930?

A. Yes.

Q. And one in 1929?

A. Yes, sir.

Q. According to the ledger account here the last item on account of charter hire of the Seminole was April 1, 1930; is that about the time that you remember?

A. Yes.

Q. When was the Seminole put in storage in 1930, do you recall?

A. Sometime in April, I think, or the first of May.

Q. That was about June, wasn't it?

A. I think it was sometime in May.

Q. Then she was in storage until late November that year, wasn't she?

A. I can't recall all of these dates; I took the Seminole in, and out so many times, on so many different occasions that I can't recall the dates. I went up and got her many times; whenever she was ordered out I would go up and get her.

Q. I was trying to figure out about how many times it was.

A. I am just trying myself; I know there was at least four times that I went up there and got her and brought her out.

Q. Four times?

A. Yes.

Q. And each of those four times she was out for a short period?

A. Yes; in 1929 when she came out she was out for quite a while when she went north.

Q. You didn't go with her when she went north, did you?

A. No, sir.

Q. I am talking about the period from 1930 on. You say you went and got her about four times.

A. Yes.

Q. And each of those were for short periods lasting approximately two or three weeks, is that your recollection?

A. Two or three weeks at a time.

Q. And those periods were the only times from 1930 on that you had anything to do with the Seminole?

A. That is all, sir.

Q. You never visited her at Ft. Lauderdale except when you went to get her, did you?

A. Yes, several times. I was up there.

Q. Do you remember any special time that you were ever up there—I am talking about the times other than those that you went to get her?

A. Yes; one time I went up and took the batteries off of her; took the batteries out and brought them to Miami; that was sometime around 1932, I guess, or 1933; I went up there and got the batteries and brought them to Miami.

Q. Were new batteries put on at that time?

A. No; they were just working on them; later on in the summer I took them back, together with an electrician, and put them back in there.

Q. Why were they brought to Miami at that time?

A. They just had to be repaired; that is all; they were brought her just before repairs.

Q. Is that the only time that you brought the batteries to Miami?

A. Yes.

Q. Your occupation is Boat Captain; isn't it?

A. Yes.

Q. You are a boat captain rather than boat engineer?

A. Yes, sir; I am a boat captain.

Q. Now during the last three times the Seminole was out was Mr. Schlappi the engineer?

A. Three times?

Q. Yes.

A. I guess he was.

Q. What is that answer?

A. I think so.

Q. Was he a good man as engineer?

A. A very good man.

Q. Did you rely on him for conditions in the engine-room?

A. Yes, sir.

Q. What is that?

A. Yes, sir.

Q. Was there any need to check up on him?

A. I checked on everybody; when I am Captain of a small boat I always do my own checking.

Q. Do you call the Seminole a small boat?

A. Yes. It is not a big boat.

Q. What is the biggest boat you have been Captain of.

A. Well, I have been Captain of good sized vessels.

Q. How big is the Molly-O?

A. Much smaller than the Seminole.

Q. How long is she?

A. Seventy feet.

Q. Do you call her a small boat?

A. Yes, sir. I am my own engineer on the Molly-O and have been for ten years.

Q. You do not carry a separate engineer on her?

A. No, sir.

Q. When you are asked to take charge of the Seminole on this last trip were you told that you are being employed by Mr. Phipps?

A., I was down on the Keys on my boat and I got a telegram from Mr. Hawkins saying that "Mr. John S. Phipps wants you to be Captain of the Seminole". Now whether that meant that he wanted me to take charge of a charter party or not, I don't know.

Q. You were informed by Mr. Hawkins that Mr. John S. Phipps wanted you to take charge of the Seminole, is that right?

A. Wanted me to act as Captain of the Seminole.

Q. Did you know Mr. Schinigoi, the steward on the Seminole on this last trip?

A. Yes, sir.

Q. He was your steward on the Molly-O, wasn't he?

A. Yes, sir.

Q. Did you tell him that you were being employed by Mr. Phipps to take the Seminole out?

A. No, sir.

Q. Do you remember that?

A. No, sir, I said I was going with Mr. Phipps.

Q. You would not deny that you told Mr. Schinigoi that Mr. that Mr. Phipps had hired you, would you?

A. No more than I would say on my own boat; any man that takes my boat—

Q. Did you know that Mr. Schinigoi has testified that you told him that Phipps had told you—

A. No.

Q. You didn't know that?

A. No.

Q. Will you answer yes or no, so we can get it in the record?

A. No.

Q. You discussed your testimony with your lawyers in the case before coming to Court, did you?

A. Yes, sir.

Q. Did they tell you that Mr. Schinigo's deposition had been taken in New York?

A. Yes, sir.

Q. Did they tell you that Mr. Schinigo had testified that you told him that Mr. Phipps hired you?

A. No, sir.

Q. They didn't tell you that at all?

A. No.

Q. Are you sure of that?

A. Yes.

Q. How much water did the Seminole draw?

A. Approximately four feet.

Q. Was that both forward and aft?

A. Yes.

Q. And amidships?

A. Yes.

Q. You spoke of the necessity of getting gas for priming the engines. Is it necessary to prime the engines only when they are cold, is that true?

A. No, I never started the Seminole's engines, but I think they needed gas at all times.

Q. You needed it to prime the engines when you started them cold?

A. Yes.

Q. You do not say that it is necessary to prime them when they are warmed up, do you?

A. I couldn't tell you that, I think they did; I think they had to put gas in them every time.

Q. Did you ever have to do that?

A. I never have started the engines.

Q. You never started the engines of the Seminole?

A. No.

Q. Did you ever see a boat with a gasoline tank on deck from which gasoline could be drawn if necessary?

A. Yes, sir.

Q. That is frequently done, is it not?

A. Yes, sir.

Q. If you have a tank on deck from which you can draw gasoline when you need it, then there is no need of having a draw-off line in the engineroom also, is there?

A. If it was equipped that way; if it was equipped that way, it would require an extra gas tank; that is all.

Q. And that tank, under that arrangement, would be out on deck?

A. Yes.

Q. And if it were out on deck there would be no danger of any leakage from the tank or the valves getting into the engineroom, would there?

A. If it wasn't near the engineroom it couldn't near the engineroom it couldn't get in.

Q. I want to ask you about the way the windows on the Seminole was left when you left the boat at Ft. Lauderdale in April, 1935. Did I understand you to say that the windows were all left open?

A. Yes; the glass windows were all open on my instructions. Mr. Schinigo did that.

Q. Were they fully down?

A. I wouldn't say that they were all right down at the bottom, but I would say that they were at least three-quarters of the way down.

Q. And that is all of them around on the main deck?

A. Yes.

Q. Did these windows have wooden shutters that went outside of them or inside of them?

A. They had Venetian blinds inside of them; but they were not solid.

Q. Were these Venetian blinds laid in a solid frame?

A. Yes.

Q. With the slats laid in at an angle?

A. Yes.

Q. And they fitted into each window, did they?

A. Yes.

Q. And you say you could raise them up and lower them down the same as you could the windows, is that right?

A. Yes.

Q. How are these windows, or Venetian blinds, or whatever you call them, left when you left the Seminole?

A. Left pretty near shut; I would say about three quarters of the way; three-quarters of the way shut.

Q. Before you left the Seminole, did you go all around the main deck to see how these windows had been left by Schinigoi?

A. To each individual window; I went through the boat entirely, before I left I went entirely through the boat.

Q. Who left the boat first, you or Schinigoi.

A. I think we got off about the same time, maybe half a minute apart.

Q. You went off together?

A. Yes. I came out of the engineroom and I went all over the boat. I went to all of the windows, just like you have here; the windows were all down; which means that they were open, and the Venetian blinds, as I call them, were about three-quarters up; three-quarters closed.

Q. When you left the boat at which end did you leave it?

A. I got off right about the middle, right about the center.

Q. Did you see Captain Pilkington there?

A. Yes.

Q. Did you have the keys at that time?

A. Yes, sir.

Q. Was the boat locked up?

A. Yes, she was locked up.

Q. The after door on the main deck was locked?

A. Yes.

Q. And the engineroom hatch was locked?

A. Yes, sir.

Q. And were the quarters on the upper deck locked?

A. Yes, sir.

Q. Did you give the keys to Captain Pilkington then?

A. No, sir.

Q. You took them with you when you went away?

A. Yes.

Q. Do I understand you to say that when you went away you told Captain Pilkington to close the windows if it rained?

A. That is right. He had an ordinary pass key himself. He could take that pass key and get in the boat. He couldn't get in the dining room or the deck house, but he could get in that "hall" with the ordinary pass key.

Q. You assumed that he had some kind of a pass key that would let him in?

A. Yes, he had them ever since the Seminole had been up there; he could go in that stern deck; he could always get in there. It was just an ordinary pass key that you could buy two for a nickel, and it was customary—

Q. It was customary for you to leave the keys with Captain Pilkington, too?

A. That is right.

Q. So on this occasion you told him to go into the boat, which was locked, and close the windows in the event it rained?

A. All of those windows were pulled back. I took the keys to the deck house and dining room and the engineroom with me. He could get in the engineroom in the hull of the boat through this window near the alleyway; he could always get in the engineroom.

Q. Why did you take the keys away with you?

A. Because I left some silverware there and Mr. Hawkins wanted me to—Mr. Hawkins wanted to take the silverware off, so I brought the keys to the dining room and turned them over to him. He got it a couple of days later, and that's the reason I turned the keys over to him when I came to Miami.

Q. You always left the keys before?

A. Yes.

Q. Didn't you trust Captain Pilkington?

A. Yes, but I had orders from Mr. Hawkins to bring the keys to Miami.

Q. These pans that were under the gasoline tanks; you could see those from underneath, could you?

A. You could see them; yes, you could see them underneath.

By Mr. Matteson:

Q. And what material do you say they were constructed of?

A. It was iron on the underneath pans, and then there was a wooden front end to the tank, it was set in, which you could see very plainly through those holes cut in the bulkhead for the gasoline lines to come out of. It was very plainly seen.

Q. How deep were those pans?

A. The pan itself,—I didn't know until the boat burned, just how deep the pan was, because you couldn't see.

Q. How deep were they?

A. I wouldn't venture to say.

Q. Well, give us some idea; was it six inches or more or less?

A. Probably four inches.

Q. Probably four inches?

A. Yes, sir.

Q. And were the edges of the metal plates turned up to make the sides?

A. Yes, sir.

Q. Were the pans flat?

A. Flat on the bottom, yes, sir.

Q. And were they level?

A. Yes, sir, when the boat was level.

Q. And this wood that you say that was inside of the pans for the tanks to sit on, just describe to us; how much of it was there? Was there a platform, or just a couple of beams, or how was it?

A. It was pretty solid.

Q. What is that?

A. It was solid, and chiseled out for the edges of the tanks to sit in. It was a frame to hold the tank. I would say it was about two inches and a half deep.

Q. And it filled the bottom of the tank?

A. Yes, sir.

Q. Came right out to the edges?

A. Yes, sir, very close.

Q. So that you had a tank that was about four inches deep—I mean a pan that was about four inches deep?

A. Yes, sir.

Q. And it was practically completely filled with a wooden platform, is that it?

A. Practically filled, yes, sir.

Q. And the tank rested on the wooden platform?

A. That is right.

Q. Well, where was this drain line that you saw?

A. Went out of the forward starboard side; went down in the bilge, and then overboard,—in the engineroom, and overboard.

Q. And it came out of the forward starboard side,—starboard side of the tank, is that right?

A. Yes, sir, that is right.

Q. How wide was this pan fore and aft?

A. Fore and aft, the tank, probably two and a half feet, three feet, probably.

Q. Well, it was practically the same width as the tank?

A. Yes, sir, the pan.

Q. And this drain line, when it came out of the pan, did it go down?

A. Straight down, yes, sir.

Q. How far down?

A. Went down to the beams; went down to the frames of the boat; then came back up again about a foot and a half; went down along the beams and then came up about a foot and then went out.

Q. Did it come under the engineroom floor?

A. No, sir.

Q. Did it go below the level of the engineroom floor?

A. It was on the same level if the engineroom floor had been up to those tanks.

Q. And the engineroom floor was about how far above the bottom of the ship?

A. A foot and a half.

Q. Now where did this pipe lead outboard?

A. Run into—went into the toilet drain; went out the side.

Q. The toilet was on the port side, wasn't it?

A. One on the starboard side too.

Q. Where was the toilet on the starboard side?

A. In the first stateroom you come to there.

Q. First stateroom you come to?

A. Yes, sir.

Q. Aft of the engineroom?

A. Forward of the engineroom.

Q. Forward of the engineroom?

A. Forward of the engineroom, yes, sir, over by the tanks.

Q. I understood you to say this drain line led aft towards the engineroom.

A. It went down, and it was on the—the tanks was forward of the engineroom; this went down and on the side and then back into the first toilet drain that went out.

Q. Now the one that you saw on the port side,—I didn't trace it. We built some racks in there to hold the valves and oil and so forth under these tanks; the storage room under those tanks. And we built these racks for sorting out valves and fittings and everything was kept under those gas tanks, which we could get under at all times.

Q. Did you have quite a quantity of parts of that kind under there?

A. Yes, sir.

Q. So that any time you needed something you could find—probably find something of the kind in these racks under there?

A. Yes, sir; the engineer.

Q. That was the engineer's department rather than yours?

A. It was the engineer's department more than, mine, yes, sir.

Q. Now you say this drain went into the drain of the toilet?

A. Yes, sir; went overboard.

Q. How was it connected there?

A. It was a fitting, just an ordinary fitting went into this toilet fitting.

Q. And what part of the toilet fitting?

A. Just before it got overboard; the steel hull, she had big iron fitting there, just before it went into the overboard, there was a drain went out of that tank, a three eighths.

Q. Connected into that—

A. Fitting, yes.

Q. Into that drain?

A. Yes.

Q. Well, there was water passing through that drain frequently, wasn't there?

A. Yes; it went overboard just the same.

Q. And then if there was water passing through that drain, it would pass back up through this drain line as well, would it not?

A. The tank is about a foot and a half higher than—two feet higher than that drain.

Q. You had a length of pipe coming back and down, and again up; now if this is connected to a pipe, at one end through which water passed, the water comes back through that pipe until it finds its own level again?

A. Finds its own level, that is right; if there is anything above that level it will run out.

Q. Then this drain line that you speak of must have been partially filled with water at all times, is that right?

A. Part of the time I would say it was filled with water. I didn't go into it very thorough, because I wasn't much interested; the only thing, I saw it in there, that is all.

Q. You just saw there was a line there?

A. Yes, sir.

Q. You don't regard that as a very efficient drain, do you?

A. No, I didn't at the time regard it as a very efficient line; but it was there just the same.

Q. And the one on the port side, I understood you never did find that?

A. I didn't trace it; I had no occasion to trace it.

Q. Where were you when you were approaching Fort Lauderdale when this one engine quit?

A. When the one engine commenced to cause trouble we was almost at the sheds.

Q. How far away?

A. I would say we had made the last turn there, about, not over a thousand feet away.

Q. And so you made the last thousand feet with one engine only?

A. I don't know whether the other engine was running or not; I don't know. I just depended on the port engine to bring her up there with, to stop.

Q. When you stopped for lunch that day, I understand the engineer told you that you were pretty near out of gas?

A. Yes, sir.

Q. And he didn't know whether you would have enough gas to get up there?

A. Yes, sir.

Q. Then in spite of that you told him to keep on running the engines while you had lunch; is that right?

A. Yes, sir; I told him to; yes, sir; but he didn't; he shut them off.

Q. He shut them off?

A. He shut them off; yes, sir.

Q. Oh, I see.

A. We went in that canal, I am pretty certain he shut the motors off; he insisted that we didn't have gas enough.

Q. I see; he insisted on having his way, and shut the engines off?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Well I don't quite understand your idea in telling him to keep them running.

A. We were going to be there just such a short time, probably ten minutes, why shut off the big motors and start them all over again?

Q. And you thought if you did, you might have to buy some more gas on the way up, didn't you?

A. Have to buy gas?

Q. Yes.

A. I didn't know ten minutes would make much difference one way or the other.

Q. If you had to buy more gas, that would give you that much more in your tanks when you got there; is that right?

A. Be more in the tanks; yes, sir.

Q. And you were trying to figure on getting there with as little gas as possible, as I understand it?

A. Yes, sir; I wanted to get there with just as little gas as I could get there.

Q. I understand that before you left Miami there was some gas transferred from the Seminole to your boat; is that right?

A. I don't remember.

Q. What is that?

A. I don't remember that; I couldn't remember those small details in a case of that kind.

Q. Well I understood from Mr. Schlappi when he testified, that you said that you wanted to have as much gas as when you started out, or words to that effect?

A. Yes, I did; that is so, I guess I did; I don't see no reason why not.

Q. And that then a quantity of gas was transferred from the Seminole to your boat?

A. That small boat.

Q. Is that right?

A. Yes, sir; if he says so.

Q. You don't remember about that?

A. No, sir, nothing at all.

Q. Haven't any recollection of such conversation?

A. No, sir.

Q. Haven't any recollection of getting gas off the Seminole?

A. Not there, no.

Q. Haven't any recollection of how it was done?

A. Not a bit. I didn't do it; that's all.

Q. You were Master of the Seminole at that time, were you not?

A. Yes, sir.

Q. And you considered yourself responsible for her?

A. Yes, sir.

Q. And all her supplies?

A. Yes, sir. If I told him I wanted that gas, I was on the Seminole quite a number of times, you know, and just this one particular time I couldn't say; I couldn't pick out one time and say anything of that kind; I couldn't say that.

Q. Did you say anything to Mr. Hawkins about getting gas for your boat off the Seminole?

A. No; that was my business. If I felt like taking gas for my own boat, why I was entitled to that.

Q. You felt you were entitled to it?

A. Yes, sir. If I put it on there, I was entitled to that.

Q. You spoke of shutting a number of water valves on the Seminole when you laid her up. Tell me just what water valves you had in mind.

A. For all the toilets, and all, going through the hull.

Q. And where are those toilets?

A. Well, it was all over the forward and after end of the boat.

Q. There were bathrooms connected with most of the staterooms?

A. Yes, sir.

Q. And did you go in those bathrooms and close the valves there?

A. No, they was on the bottom. I closed the valves—the main valves going overboard. Underneath, you could walk through the Seminole, underneath, right down under her hull.

Q. And where were those valves located?

A. They was all located under the bathrooms.

Q. Located under the bathrooms?

A. Yes, sir.

Q. Bathrooms were at the sides of the boat, were they not?

A. Yes, sir.

Q. And this walkway was in the middle of the boat?

A. Yes, sir.

Q. And the walkway was between the water tanks, wasn't it?

A. Yes, sir.

Q. Were the valves in the walkway?

A. No, sir; they was out, the side of the hull, but you could get to every one of them.

Q. How many of them were there in the forward part of the boat?

A. I don't know; I wouldn't know.

Q. Were there any in the after part of the boat?

A. Yes, sir.

Q. Where were they located?

A. Same way.

Q. Now what water valves did you close in the engine room?

A. We closed the main water valves; Rollie did that; the pumps to the engines.

Q. Who was steering the boat coming up from Miami?

A. I guess I did it most of the way.

Q. Well, that was your job, wasn't it?

A. Well in a way; yes, sir.

Q. Well, did you do the steering?

A. Most of the way. There was only four of us on there; I guess I did most of it. I know I did it coming up New River, it was crooked and tough going.

Q. Do you say that on that trip you made several visits to the engine room?

A. Going up the river, no; going up the canal, yes. I was in there three or four times—in the canal I was three or four times in the engine room; going up New River I know I was steering all the time.

Q. What was the purpose of going into the engine room those times?

A. I was consulting with the engineer, Schlappi; I was also in the galley; I was all over the boat while we was going up.

Q. No more in the engine room than anywhere else?

A. No, sir.

Q. Well when you went to the engine room, what did you do? Just look in and speak to Schlappi?

A. If Schlappi wanted me for anything; we went in two or three times, I would call him up and go down; we would discuss this, that and the other about laying up the boat, that is, all.

Q. Schlappi didn't need you for anything, did he?

A. Not as I know of, but we discussed that; when you have a few men on a boat, why it is all—everybody does what they can to help.

Q. You were going to leave the Seminole that night after you got to Fort, Lauderdale, weren't you?

A. Yes, sir.

Q. So it was necessary for you to get all these various things looked after so you could get away from Fort Lauderdale, is that right?

A. We did as much as we could going up; yes, sir.

Q. And you were checking these various departments as you went along?

A. Off and on; yes, sir.

Q. You weren't in the engine room very long at any one time, were you?

A. No, sir.

Q. I understand you to say that when you left the Seminole, the switches on the switchboard had all been pulled?

A. Yes, sir.

Q. However, the batteries were still connected, were they not?

A. That is right, sir.

Q. So that any one man could get current on the switchboard by throwing the main switch and the discharge switch; is that right?

A. That is right.

Q. I understood you to say that you were aware of certain insurance clauses about laying up boats with gasoline, but that nobody pays any attention to them? Is that the substance of what you said?

A. Yes, sir.

Q. What are these insurance clauses that you speak of?

A. Certain places, they demand you draw the gasoline off. That is insurance; that is a requirement of the insurance company.

Q. Well that is the usual requirement of the insurance companies with respect to laying up boats, isn't it?

A. I don't know. On a boat the size of the Seminole, I don't know whether it is or not. I have never had an insurance agent tell me to draw the gas out of the Seminole when she was insured.

Q. Well the Seminole never was insured, was she?

A. Yes, sir, she was.

Q. While you were Captain?

A. While I was Captain, she was insured; the insurance lapsed while I was on there.

Q. Well these insurance requirements are safety requirements, aren't they?

A. To protect the insurance company.

Q. Well it is to protect the vessel from loss, isn't that right?

A. Yes, sir; I think so.

Q. That is the only thing the insurance company is interested in?

Mr. Underwood:

I object to that, on the ground that this witness can't know what the insurance company is interested in, and

I think he has given a very clear answer,—to protect the insurance company.

Mr. Matteson:

I think my statement was gratuitous and didn't call for an answer.

The Court:

I think it is subject to being stricken.

Q. Did you submit any bills for the electrical work that you did on the Seminole in 1929?—any statement of the expenses in connection with that work?

A. Yes, the bills was kept in those—in her log book; the actual expense was kept in the back of that log book, and I would turn in a general bill to the office. Itemized bills was always kept on the boat, of anything done by the crew.

Q. Well now would that bill show what work was done, turned into the office?

A. I don't think so; I don't think it would show what was done.

Q. So there is no record existing anywhere now, of the work that you say was done on the Seminole in 1929?

A. I don't think so. I wouldn't know. I know her books were all gone. By the way, we never did find the safe which was missing off the Seminole; somebody got to it before we did; the safe was gone; that never showed up.

Q. Were the log books⁹ in the safe?

A. The log books was in the safe.

Q. Where was the safe?

A. In the captain's room.

Q. Was it a fireproof safe?

A. Yes, sir.

Mr. Underwood:

Can Mr. Botts tell us anything about the safe?

Mr. Botts:

No, sir, I wasn't there when the boat was raised. * * *

A. There was an accurate set of log books kept on that boat, all the time I was there.

Mr. Matteson:

If your Honor please, there are two or three things more I would like to inquire into, but I would like to have an opportunity to examine a few of the exhibits before I do that. I suggest Mr. Botts could take it up at this point.

Mr. Botts:

I haven't a single question of this witness.

(Following discussion, at 4:45 p. m. the hearing was recessed until 9:30 o'clock a. m., of the following day, to-wit, Wednesday, May 17, 1939.)

Wednesday, May 17, 1939, 10:00 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day.

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CAPTAIN WILLIAM P. BAKER resumed the stand and further testified as follows upon:

Cross Examination (Continued).

By Mr. Matteson:

Q. Captain Baker, there are just a few things I wanted to ask you. Was there a screen in the ventilator,—I mean, the skylight over the engineroom?

A. Yes, sir.

Q. Was there a screen in the port window?

A. In the port window? Yes, sir.

Q. That is in the engineroom?

A. That is in the engineroom; the outside window.

Q. And was the boat generally fitted with screens?

A. Yes, sir.

Q. All the windows had screens?

A. Yes, sir.

Q. Now over the engineroom there was a steel deck, wasn't there?

A. Yes, sir.

Q. That covered the engineroom and the tank space?

A. I don't know whether it went up to the tank space or not, but I think it did. I think that raised section of the engineroom deck went up to the tank space.

Q. And that went from one side of the boat to the other, didn't it?

A. Which, the—

Q. The steel deck over the engineroom.

A. No, that came in from her decks; you had about, I would say five foot deck space on each side. It didn't go all the way out—that was about five feet in. The deck was all one level, forward and aft,—the main decks. This engineroom, the raised portion of that was just like a house, took about the same width as your deck houses.

Q. This steel cover was raised above the deck?

A. Yes, sir.

Q. How much?

A. Approximately six inches.

Q. And how much between the sides of the ship and the edge of the raised steel deck, was there?

A. There would be four feet, I would say, on either side.

Q. About four feet on each side?

A. Yes, sir.

Q. And what did the deck there consist of?

A. She had a wooden deck, canvas covered.

Q. Now you spoke of seeing the trays under the tanks, yesterday?

A. Yes, sir.

Q. Through the openings around the valves?

A. Yes, sir.

Q. I show you this Libelants' Exhibit 4, which shows the valves on one of the tanks. Is that the sort of opening that you refer to?

A. Yes, sir, that's it.

Q. Before the fire, the tanks were so set that these valves were in the middle of these openings, were they not?

A. Yes, sir.

Q. So that the tank in this picture, Libelants' Exhibit 4, has been set up a couple of inches, apparently?

A. Yes, sir.

Q. And before the fire, the bottom of the tank had been below the bottom of the hole?

A. Well, I don't know as it was the bottom of the hole; right at it, almost.

Q. Right at it?

A. Yes, sir, my recollection.

Q. It would just about cover the hole?

A. Yes, sir.

Q. Well, the tanks practically filled the tank space, fore and aft, didn't they?

A. Yes, sir.

Q. Now I am not quite clear what you could see through this hole, before the fire, when the tank was in its original position.

A. You could go right in through there with your fingers, you could go right down to the bottom of the tank,—right down in that.

Q. You say there was room to put your fingers inside the hole?

A. Oh yes, and you could run through there and go right down, the space between the wood and this drain pan.

Q. Then what you observed before the fire would be based on feeling rather than seeing, is that right?

A. Yes; you couldn't see.

Q. You couldn't see?

A. No, sir, you couldn't see.

Q. Well then do I understand that it wasn't until after the fire that you saw the trays?

A. Well, you could see this, you could see the iron. You couldn't see the wood in there, because you didn't know—you could feel it in there but you couldn't see it. I never seen it until after the fire.

Q. The wood was under the tanks?

A. No, this is the tank here, where that tank set, there is an iron tray sits out here and then there was wood inside that iron tray, to catch the end of the tank.

Q. I see; and so the tank set on the wood?

A. Yes, sir, the tank say on the wood, not the iron.

Q. And did I understand you to say that this wooden platform in the tray under the tank was gouged out to fit the bottom of the tank?

A. Yes, sir. That I seen after the fire; anybody seen.

Q. And the wood was about two and half inches thick?

A. I would say so, yes, sir.

Q. Yesterday you were telling us about the drain valve and I am still not quite clear about it; I don't mean the drain valve, I mean the drain to the pan?

A. Yes, sir.

Q. Your answer as I recollect it says—

Mr. Underwood:

What page, please?

Q. Page 2059; that this pipe went straight down from the pan.

A. Yes, sir.

Q. Went down to the beams,—the frames of the boat?

A. Yes, sir.

Q. And then came up again about a foot and a half?

A. It went up to the toilet; right ahead of those tanks, I would say. It is pretty hard to estimate; probably six feet, eight feet, up there, is the toilet opening on the side of the boat; right straight ahead, outside.

Q. Referring to this blueprint which has been marked Respondents' Exhibit A, the toilet that you refer to is the one that is in the after part of the double stateroom, is that right?

A. That is right.

Mr. Underwood:

Was that at the stateroom just forward of the place marked, -lobby.

Mr. Matteson:

Lobby, yes.

Q. I am not quite sure about this space that you have mentioned, a foot and a half. Is that the space,—is that the distance from the bottom of the tank down to the beams?

A. Oh no; no, it was—the bottom of these tanks sat on the same level as the living quarters in the boat forward. The bottom of her fuel tanks,—this deck from here aft, is the same level, the bottom of those tanks. Well, the same space that you had under here, that I could walk under, you had under those tanks; it is on the same level.

Mr. Underwood:

Indicating the deck from the bow back to the place marked Lobby.

A. I could walk under those tanks, I didn't have to get down on my hands and knees. You could walk around underneath those tanks, on the floor we had under there, for our fittings; didn't have to get down on hands and knees, you could walk on your feet, squatting down, underneath those tanks, which we had fitted with the compartments for—

Q. Well, the floor of the engineroom was about a foot and a half above the bottom of the ship?

A. Yes, sir.

Q. Now referring to the Libelants' Exhibit 10, this shows the auxiliary generator, doesn't it?

A. A little auxiliary generator, yes, sir.

Q. And that sat on the floor of the engineroom, did it not?

A. Rested about five inches above the engineroom floor; practically the same level.

Q. Well, under it I see the remains of a beam.

A. Yes, sir.

Q. Is that the level of the engineroom floor?

A. I think so.

Q. And how high was this shelf that was against the forward bulkhead of the engineroom and apparently over the auxiliary motor?

A. I couldn't tell you, I don't know.

Q. The opening through which the valve from the tank came, was underneath that shelf,—that is for number 1 or the port tank, was it not?

A. Yes.

Q. And the bottom of the tank you say was just about even with the bottom of the hole?

A. Yes, sir.

Q. Well, how high were those holes above the floor of the engineroom?

A. About three and a half feet probably; three feet. That is a working shelf, it is about three feet high; that is your work bench there, this is three feet high.

Q. Now you are pointing to something on the port side of the engineroom?

A. Yes, sir. That was your work bench, over there.

Q. That was where the toilet was too, wasn't it?

A. Yes, that was the level of the work bench, just about three feet high. This is much higher, that is where the bilge pump sat up on that, pretty high.

Q. So the bottom of the hole, as I understand it, was about, according to your estimate, three and a half feet above the engineroom,—the bottom of the hole that admitted the valve to the tank?

A. Yes, sir.

Q. Now this drain line—before I get to that. Then the tray would be how far below the bottom of the tank?

A. The tray wasn't more than probably an inch. It was chiseled out to where that tank sat down almost on that steel tank—that steel tray.

Q. That would be something below—

A. Yes, sir.

Q. —the bottom of the hole?

A. Yes, sir.

Q. Then as I understand it, this drain line went directly down to the level of the beams?

A. The beams, yes, sir.

Q. —of the beams?

A. The beams, yes, sir.

Q. —of the vessel?

A. Yes, sir.

Q. And that would be about a foot and a half above the actual bottom of the vessel?

A. Yes, sir.

Q. And then ran forward from there how far in a straight line?

A. Probably eight feet. I don't remember, it was down under there; probably eight feet straight forward.

Q. And then it came up with a right angle?

A. Yes, sir, it came up with a right angle.

Q. And connected with the discharge pipe from the toilet?

A. That is right.

Q. At the bottom of that pipe?

A. I think it ran into the side, the aft side; I think that is right.

Q. What is that?

A. The aft side I think is where they went in, I am pretty positive.

Q. And was the toilet discharge pipe above the water level?

A. It was about an inch or two under.

Q. An inch or two under the water level?

A. Yes, sir.

Q. You mean, the bottom of it?

A. No, the top.

Q. Did you have a sea-valve on that toilet connection?

A. Yes, sir.

Q. What kind of a sea-valve?

A. A gate-valve.

Q. Can you describe it to us?

A. A gate-valve, an ordinary gate-valve, is all I know.

Q. Well, what is a gate-valve?

A. Just like,—a gate-valve rolls with a—(illustrating) instead of going down to a seat.

Q. It is a sliding piece of metal that slides through a socket?

A. That is right.

Q. Then when the vessel was in commission, the discharge pipe would be full of sea water when the vessel was afloat?

A. That is right.

Q. And then that water would run back through this drain line and fill the drain line up to that level?

A. To that level, that is right.

Q. Which was higher, the discharge pipe of the toilet or the pan under the tanks?

A. The tanks were higher, they had to be; they sit on the same floor level with the toilet.

Q. The same floor level?

A. Yes, sir.

Q. How much difference in height would there be?

A. There would be at least four inches higher,—three inches higher.

Q. About three or four inches?

A. Higher than the drain; yes, sir.

Q. That is the tray would be three or four inches higher than the discharge pipe that the drain line was connected to, is that right?

A. Sitting on the same floor level; it sit on the same floor level as the toilet, the same level of the tanks,—the bottom of those tanks was on that same floor level, the toilet was that flush; we never had any water in this drain,—in those pans. I figure we must have had at least four to six inches drop there.

Q. Well, if for any reason the yacht listed to starboard, so that her starboard side was brought that much lower, four to six inches than it normally would be, the water would run back through the drain line into the pan, wouldn't it?

A. It was too far inboard, she couldn't change that far. Those tanks didn't go out to the sides by at least three and a half to four feet.

Q. Well, the point I am making is simply this; if the yacht listed so that her starboard side was brought

down four to six inches, you would have that much head of water on the discharge pipe, from the toilet, wouldn't you?

A. The toilet,—we never had any backup in the toilets.

Q. Well, I am not speaking of the toilet, I am talking just about the drain line.

A. The drain lines would be on the same angle as the hull; you got to change that angle.

Q. I appreciate that; I am just taking it a step at a time. If you listed—

A. Yes, sir, the outside would be farther under water than the inside.

Q. So that you would get a head of four to six inches, whatever your list was, on that drain line?

A. The outside, yes, sir. The side of the boat.

Q. And that wouldn't be an unusual thing for the Seminole to list in such a way as to bring her starboard side down four to six inches, would it?

A. Not a bit.

Mr. Underwood:

Q I didn't hear you, Captain.

A. Not a bit.

Q. And if you were going through a sea-way, so the waves are coming up from time to time, whenever you passed through a wave you get a greater height of water on the discharge pipe, don't you?

A. Well, when we was under way, all these pipes have got—they have got—what do you call those?—they have scoops on there, you know, where you protect that water from coming back.

Q. What do you mean by a scoop?

A. Well, a scoop is something put on a boat where, when you are going ahead, you create a vacuum in there. All the toilets had them.

Q. Similar to a visor effect?

A. Sure, it creates a vacuum, while you are running; always create a vacuum in there. We have them on all of them.

Q. So when that was in place it would be on the forward side of the pipe?

A. Yes, sir.

Q. And the after side of the pipe would be open?

A. Open, yes, sir.

Q. And if you are under way, the motion through the water creates a vacuum behind you?

A. Creates a vacuum.

Q. —by this contrivance. If you were anchored and rolling, of course it wouldn't have any effect?

A. That wouldn't have any effect at all.

Q. You say the water never did back up through this drain line into the trays, to your knowledge?

A. No, sir, not to my knowledge.

Q. Do you know that it was necessary for some of the engineers on the boat to wipe out that tray from time to time?

A. No, sir.

Q. Never heard of that?

A. No, sir, nobody ever reported that to me.

Q. Now the pipe going down, going across and coming up, forms what you call a trap, doesn't it?

A. Trap, yes.

Q. And any water that got in there would just stay there?

A. Stay there until more pressure is applied on the other end.

Q. It would have to be forced out by pressure?

A. Sure.

Q. And you couldn't very well put any pressure on a tray end of the line, could you, to get it out?

A. It would find its own level.

Q. Now yesterday, you were telling us about some crookneck pipes.

(A.) Q. Gooseneck.

Q. Gooseneck, I think; were they in the after part of the ship?

A. There was four on each side of that engineroom desk, as it come up. They was all on that deck; and there was of them, four on each side; two inch pipe.

Q. You are speaking of the steel deck over the engineroom?

A. Steel deck over the engineroom.

Q. Did they pass through that steel deck?

A. No, sir, they went through the wooden deck right at the side of—these goosenecks was right down just—came up right at the—right by the side of that raise. They wasn't on the steel deck, they was in the wooden deck, right immediately alongside.

Q. The only testimony we have had in the case before, about these crooknecks, as I recall it, is that there were some in the after part of the ship. Were there some back there too?

A. Yes, sir; there was some down there too; some aft too. There was four back there,—away back aft.

Q. Well, you say these were two inch pipes?

A. Yes, sir.

Q. And what is a crookneck?

A. Gooseneck?

Q. Gooseneck.

A. It is a half turn, comes all the way up, and goes back; just a return.

Mr. Underwood:

Indicating 180 degrees?

Q. Yes, sir, that is at the top of the pipe, there is a bend of 180 degrees?

A. Yes, sir; come around, right around like that.

Q. So that the end of the pipe is facing down to the deck, is that right?

A. Yes, sir; facing right down to the deck.

Q. And how far above the deck did you say these pipes go?

A. Go about, I would say they was about eight inches above the wooden deck; the highest part of them.

● Q. The highest part would be about eight inches above the deck?

A. Yes, sir.

Q. And then the end of the pipe, after the turn has been made, where it is facing the deck, how high would that be above the deck?

A. About two and a half or three inches.

Q. How far apart were these pipes?

A. About four feet, four and a half feet, apart; one in each corner, and they was divided equally between that engineroom—I don't know just how far that is.

Q. Where did they come down in the engineroom?

A. They went in the ceiling between the engineroom and the—the outside; she had a partition out there, in that hallway; they come right down through there.

Q. Went down through the hallway?

A. Well, in that partition, in between the partition and the hallway; they went right through—they didn't go inside the engineroom, they wasn't inside; they went right down, after they got through the deck; then they was in the engineroom.

Q. Then they didn't go through the engineroom until after they passed through the floor of the alleyway; is that correct?

A. That is right, yes, sir; they was in the partition there.

Q. They were in the partition?

A. Yes, sir.

Q. And that is on the starboard side?

A. Yes, sir.

Q. Now on the port side where were they located?

A. One in each corner. That went down; there was—she had this pipe leading up and over, through, run right along the top of the deck there, came out of the corner, came right up and out; came out from under the side of the hull and turned and came right up.

Q. Were they inside the partition too?

A. No, there was no partition over that side; that is over the engineroom. Our engineroom went one side, it was right out to the side of the ship; they made the turn and came back up.

Q. How long were these pipes from top to bottom?

A. They was about nine feet down, I guess, from the top of the engineroom hatch to the floor; went through there and turned and went down, came along the sides.

Q. Well, did you ever follow those pipes to see where they led to?

A. I did a couple of them; I didn't all of them.

Q. Which two did you follow?

A. Followed the two forward corners; both forward corners.

Q. They are the only two that you actually followed?

A. That is all.

Q. To see where they went to?

A. That is all.

Q. And this one that was in the starboard forward corner, how close to the corner was it?

A. It was in the corner, set right in the corner of the batteries; went right up the other side of the batteries, on the outside of the engineroom.

Q. And the one in the port corner, where did that lead to?

A. Went right straight down, just under the engine room floor.

Q. That was the corner in which the toilet was, wasn't it?

A. No, it was over, it was in by the—the toilet was sitting out at the side of the ship, and this gooseneck came in right over that; it was about four feet in.

Q. I show you this picture, Respondents' Exhibit 4-A, which has been introduced, showing the condition in the engineroom sometime after the fire, and some of the wreckage. Can you point out to us the pipe you are talking about there?

A. Well, this—that's the starboard corner. This pipe came right down through this corner here, right down this corner.

Q. That is the corner you say it came down through?

A. Yes, it was on the outside of this steel bulkhead; on the outside of that steel bulkhead.

Mr. Underwood:

Indicating the fore and aft alleyway bulkhead, in-board?

A. It wasn't in the engineroom, it was at the corner at the outside, where the batteries was.

Q. But you don't see the pipe, or any part of it, or the remains of it, in that picture, do you?

A. You couldn't see it in there, it wasn't in there.

Q. And you don't see it in this other picture, Exhibit 4-B, do you?

A. It wouldn't be here.

Q. What was that?

A. No, sir, you don't see it there.

Q. I show you Libelants' Exhibit 16, this picture at the left, which also shows some of the wreckage of the engineroom. Do you see anything that looks like that pipe in there, anywhere?

A. Let's get this straight in my mind, first. I don't get the picture, to tell the truth.

Q. Well, this picture, I think I can explain it to you; it is taken in the engineroom looking towards the port

forward corner where the toilet was; and I think this engine down here, underneath, is the little generator. Does that straighten it out for you?

A. Well, this pipe here came down right over through the top here and turned right down through this corner here; it went down by the toilet, came right down through there. You couldn't see it here, couldn't distinguish it if it was there. It would be right up against the bulkhead, on this side of the little engine, between there and this side of this little generator.

Mr. Underwood:

Indicating a part of the little generator motor.

A. Right in there, yes, sir. So much of that wreckage around, it is hard to distinguish.

Q. And these pipes that you speak of now were all in the engineroom space, as I take it?

A. All in the engineroom space? No, sir; the four on the starboard side were in the—

Q. In the alleyway?

A. In the alleyways.

Q. The four on the port side were in the engineroom space?

A. Yes, sir.

Q. Were these straight pipes or did they have bends in them?

A. They had bends in them. They had pipe fittings, that they was made of.

Q. So they were not straight pipes, straight down from the deck?

A. No, sir.

Q. Did you ever see those after the fire?

A. I never looked.

Q. Did you see the Seminole after the fire?

A. Yes, sir.

Q. When did you see the Seminole after the fire?

A. Plenty of times.

Q. Well, when was the first time you saw it after the fire?

A. Sometime in October.

Q. Several months later?

A. Yes, sir.

Q. Did you see the vent pipes or any remains of them, at that time?—these pipes you have been speaking of?

A. I couldn't recall whether I did or not. I went over her pretty thoroughly at one time, after I got hold of her.

Q. What is that?

A. I went through her pretty thoroughly one time; there was a lot of stuff missing off the boat,—plenty.

Q. I imagine so, after four months.

A. Yes, it was all gone.

Q. You never did see anything of them after the fire?

A. No, I don't remember; I never even looked; never even gave it a thought.

Q. I would just like to ask you one more question about this Libelants' Exhibit 4, showing the valve coming out of the number 1 tank. Is there any drain pan visible there now?

A. No, sir.

Q. Well, there should be, shouldn't it?

A. I don't know just how it is moved around; it should be.

Q. If it was still in place it should be visible?

A. Yes, sir.

Q. Do you see it in this Libelants' Exhibit 5?

A. I don't know whether that's it or not, I couldn't swear.

Mr. Underwood:

Indicating what?

A. I don't know whether that is the pan or not; I couldn't swear to that.

Mr. Underwood:

Mark the thing that you don't know whether it is the pan or not, will you, please?

Q. This right here, is that it?

A. Yes, sir, I imagine it is, but I don't know.

Mr. Underwood:

Draw a line from that, and mark it.

Mr. Matteson:

It is sufficiently marked, by a cross. * * *

Mr. Underwood:

By a cross just to the left of the piece of weed that comes out from the opening of the bulkhead.

Q. Well, this doesn't look like a turned-up side of a pan, this thing that you are pointing to, does it?

A. No, sir.

Q. Captain, you said that you had visited the Seminole at Ft. Lauderdale at other times than when you went up to get her?

A. Yes, sir.

Q. And you spoke of one time when you went up to get the batteries, and another time when you took them back after they had been repaired?

A. Yes, sir.

Q. Do you recall any other times that you were there?

A. I was up at the Seminole quite a number of times.

Q. You don't recall any other specific occasions?

A. I used to go up there and do a lot of painting, do anything that I would see needed to be done to the boat; a lot of odd times I would go up there.

Q. There was no other special time that you recall?

A. No, sir.

Q. Except some time when you went up to do some work on her?

A. To work on her; I used to go and come—

Q. One other thing I wanted—

Mr. Underwood:

May we have him finish that? "I used to go and come"—

A. On my own time; when I thought anything was needed up there, I used to go and look after the business of the boat up there.

Q. On this blueprint, I wonder if you could indicate for me the hatchway through which you say you got down in the forward bilge space.

A. The hatchway? Forward bilge space? Right in here.

Q. Will you show us again where that was; draw a little square to represent it?

A. Let's see, it was right in here, the hatch.

Q. You have drawn an oblong in the passageway, and I will draw a line from it and marked it, hatch.

A. Hatch, yes.

Q. Now was there any other hatch on that deck?

A. Not in here, no, sir.

Mr. Underwood:

Indicating the space forward of the Lobby.

A. Forward of the Lobby, yes, sir.

Q. Was there any other hatch on that deck, aft of that?

A. No, sir, not that you could get in.

Q. Was there one aft of the engineroom?

A. Yes, sir.

Q. Where was that?

A. (Witness drawing).

Q. You have indicated a space in the galley, is that right?

A. Yes, sir.

Q. That was how you got down in the after space?

A. Yes, sir.

Q. Captain Baker, one more thing I would like to ask you: I think you said it had been customary in other years to leave the keys with Captain Pilkington.

A. Yes, sir.

Q. So that on previous occasions when the boat had been there, Captain Pilkington had the boat's keys to get into the boat?

A. Yes, sir.

Q. Well, then, I would like to ask you to explain to us how it is that you know that he had what you call a pass key.

A. I know he had several of those things, he could get into the boat, because he asked me did I want him to turn the engines over, and I told him, no, I told him I didn't want him fooling with the engines.

Q. It was customary, was it not—if you know, when boats were stored there for Pilkington to turn them over, —turn the engines over during the period of storage, if the owners wanted him to? You knew that?

A. Yes, sir.

Q. Well, when he asked you, you didn't think that he meant to turn them over right away, did you?

A. Immediately?

Q. Yes.

A. I don't know what he meant; he just asked me if I wanted the motors turned over, and I told him, no, I didn't want him fooling with them.

Q. You told him you didn't want him fooling with them?

A. I didn't want him in the engineroom.

Q. You told him you didn't want him in the engineroom?

A. That's right.

Q. And you understood what he meant, when he asked you about turning the engines over, was, that if the boat was going to be there for a long period, he would occasionally go into the engineroom and turn the engines over, if you wanted him to—by hand, is that right?

A. I imagine that was his meaning. We never—

Q. That was the way you understood it?

A. That was his meaning, I suppose.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Now then, how long have you lived in Miami, Captain?

A. I have been here since 1897.

Q. Where did you come from when you came to Miami?

A. Born in Keywest, and come from there here.

Q. Are you related to Captain Clede Baker in any way?

A. Clede Baker? Yes.

Q. What is the relationship?

A. Brother. I never heard him called Captain, before.

Q. Now you made the statement that Captain Pilkington had a pass key that would unlock this rear door?

A. Yes, sir.

Q. Did you ever see him with such a key?

A. I think I have, on several occasions. I think he came out there with this big bunch of keys and got into this boat. He had plenty of them; I have been in with him several times.

Q. When he went into the Seminole?

A. The Seminole; he and I went in several times together.

Q. Well, you used the regular Seminole keys for that, didn't you?

A. Came out of this big bunch of keys; I don't know whether it was Seminole, or not.

Q. He came out with a big bunch of keys?

A. Yes.

Q. Now do you know whether these were the regular keys for the Seminole, that had been left with him?

A. I couldn't tell you that.

Q. You don't know?

A. No.

Q. Then you don't know whether this key that he unlocked it with, was the Seminole boat keys or not, do you?

A. No.

Q. Then when you said that he had a key, you didn't know,—you were just guessing?

A. I was guessing, yes. Anybody has got a pass key. He could get in the boat.

Q. If he had a pass key he could have gotten in the boat, is that what you want us to understand?

A. Yes, sir. He had a pass key, he had a bunch of them, ordinary two for a nickel pass keys.

Q. Now are you guessing again, or are you telling something that you know this time?

A. Well, I am telling something that I know. He used to get this pass keys and come out and let me in the Seminole, and let me in there if I didn't have one in my pocket.

Q. You mean he would go in and get some keys out of his office and let you in the Seminole?

A. That is right.

Q. And was that the time when the Seminole's keys were left with him?

A. Probably so.

Q. You don't know whether he had a pass key or not, do you?

A. No, I wouldn't swear he had one.

Q. You did swear to it yesterday, didn't you?

A. No, I didn't.

Q. All right, we will leave it that way. Now let's take up the subject of these pans underneath these gas tanks a little bit.

A. Yes, sir.

Q. Now I want you to correct me if I misunderstood you yesterday.

A. Yes, sir.

Q. Or, whenever you were testifying about it. My understanding is that after the fire you said that you saw these pans, and that there was some part of the charred wood in the pans under the tanks; is that right?

A. Some part of the charred wood?

Q. Some part of the charred wood that the tanks had been sitting on, or some part of the wood that the tanks had been sitting on.

A. A lot of wood was not even charred.

Q. A lot of wood was not even charred; all right. Then after the fire you saw these tanks still sitting on the wood that had been the foundation; is that right?

A. Well, all the tanks were moved, and some parts of them were sitting on wood and some were not.

Q. But you saw portions of those original wood foundations that had been under the tanks?

A. Yes, sir.

Q. And after the fire, you saw that, did you?

A. Yes, sir.

Q. And that wood foundation was at that time still resting in these pans, is that right?

A. Yes, sir.

Q. And you saw the pans, and the wood, after the fire?

A. Yes, sir.

Q. Now then I want to get at this—before I get to that. Referring to Respondents' Phipps' Exhibit A; on the blueprint there are two outlines of the boat. As I understand it, the one on the left hand side illustrates an upper level and the one on the right hand side illustrates the lower level; am I right?

A. Yes, sir.

Q. Now on the sketch on the lower—on the right hand side, representing the lower level, there is a word, passage, written here on three different places. One aft of the engineroom, one—I will say to the right side of the engineroom, and one forward of the engineroom?

A. That is right.

Q. Is the floor level of that passageway one continual level without any steps up and down?

A. That passageway? Yes, sir.

Q. Now there is a point here that I am not quite sure about. In this passageway, to the right of the engine room, there is an opening which might either be a door or a window, so far as this blueprint is concerned. Is that a door or a window?

A. A window.

Q. And it has been testified by Mr. Hawkins that, standing in the passageway, the lower ledge of that window would be about waist high; is that about correct?

A. Yes, sir.

Q. Now then, here is the point that I have perhaps been laboring under a misapprehension. Is the floor level of the engineroom the same as the floor level of this passageway?

A. Oh, no, sir.

Q. All right; how much below the level of the floor of the passageway, is the floor of the engineroom?

A. I don't know; it is quite a bit.

Q. Well, give us your best—

A. I think when you—it must be at least three and a half to four feet; the top of your head just about reach that window, if you was in the engineroom.

Q. Then from the floor level of the engineroom to the sill of this window into the passageway, was perhaps approximately six feet; is that correct?

A. From the—

Q. Floor of the engineroom to the sill of that window, would be approximately six feet; approximately level or a little above the top of your head?

A. That is right.

Q. How tall are you, Captain?

A. Six feet.

Q. All right. Then if a person went from the passageway through the window into the engineroom, they would have a considerable drop on the inside, wouldn't they?

A. Yes, sir.

Q. And as I understand it, the foundation or base which supported the bottom of the fuel tanks was on the same general level as the floor of the passageway and Lobby?

A. That is right.

Q. Now these metal tanks, I believe—I mean, metal pans, underneath the tanks, I understood you to say they were steel?

A. Yes, sir; iron.

Q. Iron or steel?

A. Iron or steel, yes, sir.

Q. All right; and there are two of those tanks—two of those pans underneath the tanks?

A. Yes, sir.

Q. Each pan—or two tanks resting in each pan?

A. Yes, sir.

Q. And each of those pans rested on a wooden support or foundation, which in turn rested on the pan; and then the pan rested upon the supporting foundation; is that correct?

A. There was one—inch floor underneath this whole thing. When you got under those tanks you seen wood above it, there was one inch of wood, then there was a steel pan, and inside of that pan was this wood supporting the bottom of the tanks.

Q. I see; and this wooden floor that you saw on there, to the best of your knowledge, would be about a continuation of that wooden floor of the Lobby?

A. Yes, sir, I would say it was a continuation of the floor of the Lobby.

Q. Now when this drain that you stated came out of the pan which side drain was it you said went into the toilet outlet?

A. This one here in the starboard side.

Q. Then will you indicate by making a dot with this red pencil, on Respondents' Exhibit A, the approximate location in the corner of that—or in the pan where this drain outlet left the pan?

A. This is it, right there.

Q. All right; the witness has made a cross or dot in there.

Mr. Underwood:

May we draw a line from that, and mark it, Mr. Botts?

Mr. Botts:

Yes, certainly.

Mr. Underwood:

I will draw a line from that, the arrow pointing to it, and the line to the lower margin, marking "Pan outlet".

Mr. Botts:

Drain outlet. Well, pan outlet, yes.

Q. Now that outlet, from which that drain led, is at the point marked, pan outlet, indicating by the arrow head?

A. That is right.

Q. And that then left the pan at the forward side of the pan, is that right?

A. Yes, sir.

Q. And how far from the right hand—is this starboard?

Mr. Underwood:

That is right.

A. Right and left, now, anyway.

Q. Then from the starboard edge of the pan, how far was that outlet towards the center of the boat, approximately?

A. Towards the center of the boat?

Q. Umh umh; to illustrate this, suppose that this is the—you have indicated quite a ways in there. Suppose this is the edge of the pan; how far towards the center of the boat?

A. From the side of the boat?

Q. No, from the edge of the pan. I am trying to get the location—

A. To the side of the boat?

Q. I am trying to get the location crosswise of the boat; how far from the edge of the boat and towards the center of the boat that opening was. You have said it was right close to the edge, forward.

A. Right close to the edge forward; but it is right out in the corner. Those pans were oval shaped.

Q. The pans were oval shaped, they were not square?

A. No, sir.

Q. Oh, I see; well, I beg your pardon then. The pan then was not a square pan, but oval at each end?

A. Yes, sir.

Q. —circular at each end; I see. Then that question wouldn't be appropriate. I had it in mind it was a square pan.—Now then have you marked on this Exhibit A, anywhere, the toilet outlet to which that drain pipe from the pan was connected?

A. No, sir.

Q. All right. Will you indicate on Exhibit A, the toilet that was connected with the same outlet to which the drain pipe was connected?

A. (Witness marks.) Came in right about,—I take it that is the opening in the side of the boat, and this is the toilet. This came in here.

Q. Mark there—

Mr. Underwood:

It is already marked. Witness marks a dot under a circle which contains the letters, WC, in a space just abaft the double stateroom on the starboard side of the boat.

Q. And that dot indicates the toilet. Now then approximately where, through the skin of the ship, did this outlet valve pass? Was it—

A. Here is the outlets right there.

Q. In other words, the outlet was approximately opposite the toilet?

A. Yes, sir.

Q. And how far below the water line of the ship, was that outlet?

A. From the side of the boat? About two inches below the water line.

Q. Just below the water line?

A. Just below the water line.

Q. Now my understanding is that this toilet was protected from the water backing up, by a gate-valve?

A. Yes, sir.

Q. And that this drain pipe connection went into the toilet outlet between the gate-valve and the skin of the ship?

A. That's right.

Q. Now then this drain—this pan drain pipe, as I understand it, it went straight down, or approximately straight down from the pan until it got below the level of the floor in the Lobby?

A. Yes, sir.

Q. And then passed under the floor of the Lobby and connected with the outlet gate. Now when it got over to somewhere in the vicinity of the outlet gate, or outlet aperture in the hull of the ship, did it come up again?

A. Yes, sir.

Q. And how far was it turned in an upward direction, how many inches or feet, from the time it got over to the vicinity of the outlet?

A. It came up to that—I couldn't say; it came from the bottom of the boat up to that toilet; how far that is I don't know; I wouldn't say because I don't know.

Q. I want to ask you this question, and use this as a basis so we will understand each other. We will suppose that this lead pencil mark that I have made here represents the bottom of the pan?

A. Yes, sir.

Q. (Drawing on paper.) With the edges turned up; and that these two little parallel lines that I have drawn on there represent the downward course of the toilet pipes?

A. Yes, sir.

Q. Now then how far was it from the pan down to where this outlet pipe turned to run along underneath the boards?

A. Went down to the skin of the ship, which must be—

Q. How far was that drop?

A. Oh, I could sit under those tanks; I could sit down under there. I don't know how much that would be, three or three and a half feet, some such distance.

Q. Somewhere three to four feet, would that be correct?

A. Yes, sir, three to four feet.

Q. Then we will mark here, three to four feet; that down pipe; what was the character of that pipe?

A. Galvanized pipe.

Q. Galvanized pipe. Then it came down to an ordinary elbow, did it?

A. Yes, sir.

Q. All right, we will put in the elbow here, now. And then we will start running that pipe along there again. Now when the pipe made this turn, did it go—was there any other turn underneath the Lobby floor, or did it go directly over to the point where it turned up again?

A. Went straight on.

Q. Then there was a straight pipe?

A. Yes, sir.

Q. Coming over, and that passed entirely underneath this Lobby?

A. Yes, sir.

Q. And how wide was that Lobby floor, do you know—fore and aft? What was the distance fore and aft, across that—

Mr. Underwood:

The scale is on there.

A. I don't remember these figures,—how many feet. I can estimate that; I would estimate it—

Q. Well now then, your best judgment as to that, how wide was that Lobby?

A. Seven and a half feet.

Q. Well then, this pipe running along there would be some eight feet long, would it?

A. Eight feet long.

Q. Then we will put it, eight feet plus or minus,—more or less. Now then you came to another elbow, did you, that you turned—

A. Yes, sir.

Q. And that turned up?

A. Yes, sir.

Q. All right. Now how far upwards did that pipe run before it reached its—the point where it was connected with your outlet?

A. It is the same level; that pipe turned under the floor here, came about six inches under the floor,—this did.

Q. Then this pipe would then go up about six inches less than it had previously gone down?

A. Yes, sir.

Q. And then another elbow, was it?

A. Yes, sir.

Q. And then it went straight into a—some kind of a fitting?

A. Yes, sir.

Q. Either a nipple or something?

A. Some kind of a fitting.

Q. And then goes into a fitting here, and then here is your outlet pipe coming down here, and it fitted in there in some way?

A. Yes, sir.

Q. And here is your outlet pipe that goes up to the toilet, is that it?

A. Yes, sir.

Q. And then that would be how high? And it comes in there and then goes up a certain distance, and we have the toilet there?

A. Yes, sir.

Q. All right; and then here is the gate-valve in there, shutting off that toilet; is that right?

A. Yes, sir.

Q. Now then this pipe, when the vessel was in the water,—this pipe all the way down and up to about six inches below there, was underneath the water, wasn't it?

A. Yes, sir.

Q. So that that pipe remained full of water all the time, didn't it?

A. I think so, yes, sir.

Q. There was no valve or shut-off anywhere in this line?

A. No, sir.

Q. Whenever the boat listed over so that this was a foot underneath the water, then there would be—the water would just squirt right up into that pan, wouldn't it?

A. No, sir, absolutely not.

Q. What?

A. No, sir. The side of the vessel would go down. The side of the vessel would go down, but you get in this far, you are nearer the center of the vessel, the center wouldn't go down any; the sides will go down but not the center. It wouldn't come up in that toilet. That toilet was sitting on the same floor level, no water come in that toilet.

Q. All right. Well, then, in this pipe which is underneath the outlet from the pan, I will put a W there; that would be approximately where the water level would be?

A. Yes.

Q. And from that point up to the pan is approximately six inches, isn't that right?

A. Well, I am guessing at all those.

Q. Approximately six inches?

A. Approximately. I am guessing at those.

Q. All right. Mark six inches in there.

Mr. Underwood:

Will you mark, water level, there?

Mr. Botts:

I just indicated it by a W.

A. The water level is the same in the boat, I don't care whether you come to the side, you have always got a common water level all over the boat.

Mr. Botts:

Now I would like to have that sketch that has been identified by the witness, marked as Pilkington's Exhibit 11.

(The said paper was admitted in evidence without objection and marked Pilkington's Exhibit number 11.)

Q. Now then, I am interested a little in these ventilator pipes. Now as I understood you, in the space beginning with the bulkhead forward of the tank room, and back to the bulkhead or wall aft of the engineroom.

Mr. Matteson:

You said, between the tank room; did you mean that?

A. No, it wasn't forward of the tank room.

Q. All right; from the—to the aft wall of the engineroom, there were four of these gooseneck ventilators.

A. Yes, sir.

Q. On each side?

A. Yes, sir.

Q. And as I understand it the four which were on the starboard side didn't pass up through the engineroom, but passed up through the passageway.

A. Well, they was—the engineroom is steel, then it was finished with wood, there was mahogany finish, and there was the space.

Mr. Underwood:

Indicating the pipes passed down between the steel engineroom bulkhead and the joiner work in the passageway; is that what you indicated?

A. Yes, sir.

Q. As I understand it then, these ventilator pipes on the starboard side of the engineroom passed between a steel engineroom wall and a wooden wall, that was the wall of the passageway?

A. Yes, sir.

Q. And they passed directly up through there. Now will you take this white pencil and make four little circles along the wall of the engineroom, at the approximate points where those four pipes passed upward.

A. This is all approximate, too.

Q. I understand that.

A. One was right there.

Q. See if you can make a little circle there; all right, that's it. There are four on this side; would you mind if I make those just a little heavier, so if they blue-print that it will show up a little better. Now we have four white dots on the starboard side of the engineroom, and those dots are approximately opposite the points in the wall where those four pipes passed up, encased in the wall?

A. That's right.

Q. All right. Now then will you similarly mark the points in the port side of the engineroom, at which those pipes came up?

A. This is where you ought to get up on this deck there, because there is your engineroom hatch, on that level right there.

Q. Let's put it down here.

Mr. Underwood:

May the question be made clear as to whether Mr. Botts means where these vent pipes passed through the deck or where they went into the bilge?

Mr. Botts:

In the floor of the engineroom, where they passed into the bilge.

A. Well, that is another story. They go down; this was a raised deck; that's your steel deck, on there. Well, they would go down through here.

Q. Well, suppose you mark on the top of the deck, at the point where they came out; we will mark it there, and then we will mark it again down below, where they went into the bilge.

A. They came out right on these corners here, like this,—four of them. Now this thing here went over and came down—

(Hearing was suspended briefly.)

Mr. Underwood:

Captain Baker has indicated on Respondents' Exhibit "A" by four dots on the port side abreast the raised engineroom deck on the upper deck the approximate location of the points where the gooseneck ventilators pass through the deck. He has indicated likewise by four dots on the starboard side the places where the gooseneck ventilators pass through the deck; on the lower deck he has indicated by four dots on the port side, one to port

of the shelf and to starboard of the toilet close to the forward bulkhead, one close to the port side of the ship just forward of the window, one on the port side between the window and the chief engineer's room and one in the port after corner of the chief engineer's room, indicating the points where these vents passed into the bilges.

(By Mr. Botts):

Q. How many times have you visited the Seminole since the fire?

A. Visited the Seminole since the fire?

Q. Yes.

A. Well, I practically lived with her; I went to Fort Lauderdale and got her and towed her to Miami, and immediately when I got home she was stored in Miami, and I have had charge of her ever since.

Q. When was the first time after the fire that you saw the Seminole; how long?

A. October that year.

Q. Was that the occasion in which you saw these pans with some burnt wood, some of it burned, and what was left was resting in the pans?

A. All times since then.

Q. You have seen it any number of times since then?

A. Yes, sir.

Q. And the pans have been there in that position ever since, except perhaps for the little weathering?

A. Yes.

Q. Now there was a window in the port side of the engineroom?

A. Yes.

Q. And that window was screened?

A. Yes.

Q. How high above the engineroom floor was the sill of that window?

A. Above what?

Q. The engineroom floor.

A. Six feet probably.

Q. Was the sill of the window on the port side that opened through the skin of the ship at the same level as the sill of the window, the starboard side that opened into the passageway?

A. Practically; yes, sir.

Q. Now was there an opening in the side of the engineroom, in the port side of the engineroom?

A. There was one in the engineer's quarters, and a door opened into the engineroom.

Q. So that the window in the engineer's room was about the same level as the window in the engineroom?

A. Yes.

Q. How high above the engineroom floor was the floor of the engineer's room.

A. The floor of the engineer's room was on the same level with the main floor of the boat.

Q. And that would be some three and a half to four feet above the level of the engineroom floor?

A. Yes.

Q. Now, Mr. Baker, I believe you stated that you gassed up your fishing boats from the supply of gasoline in the Seminole?

A. Yes, sir.

Q. How did you transfer that gasoline from the tanks of the Seminole to the boats that you were gassing?

A. If we took out any amount at all we took it out with a hose.

Q. How would that hose be connected?

A. With an ordinary coupling.

Q. How would it be passed out to the boats?

A. Take it through the window.

Q. Through the window?

A. Through the window, yes.

Q. If you didn't do it that way, how else would you do it?

A. Well, we had five-gallon cans, six gallon or seven gallon cans, and if we wanted to get five gallons, we would put it in a five-gallon can and pass it through the window.

Q. Pass it out through the window more than six feet above the level?

A. We had a work bench there about three and a half feet high.

Q. You climbed up on the work bench and passed it out that way?

A. Yes.

Q. How high was this work bench top above the engineroom floor?

A. From 32 to 33 inches.

Q. And the man would stand on the work bench and you would hand him the gasoline in these cans and he would pass it out that way?

A. Yes.

Q. Captain Baker, isn't it true that when the level of gasoline in your main tanks got low, that that was the only way you got gasoline out?

A. When you got it started the siphon will work on its level; the siphon will get it up; you can start it and the siphon will pull it up over a hill and—

Q. How would you force the gasoline in to your garden hose in order to get your siphon started?

A. It never got that low; I never had it that low.

Q. On the last trip that you went down you took gasoline out of the main tanks there to supply your fishing boats on that trip, didn't you?

A. Yes, sir.

Q. Did you take it out through the hose or did you take it out in the five-gallon can?

A. Both ways.

Q. Both ways?

A. Yes.

Q. Did you ever get so low in gasoline on that trip that you couldn't take it out through the hose?

A. Not that I remember.

Q. How is that?

A. I said not that I remember.

Q. In other words, there was always sufficient gasoline in those tanks so that you could take it out through the hose if you wanted to?

A. Yes.

Q. You are sure of that now?

A. Very sure.

Q. And the bottom of these tanks was about three and one-half feet below the ledge of that window, wasn't it?

A. Yes.

Q. So when the last gasoline was taken out you had at least three and a half feet of gasoline in your tank?

A. Yes; when we left down on the Keys.

Q. I mean when you left down on the Keys.

A. That is right; I don't know how much there was in there.

Q. There was at least three and a half feet of gas, wasn't there?

A. I couldn't tell you that; that would be entirely up to the engineer. He never reported the amount of gas to me, not down there.

Mr. Underwood:

May I have that answer read?

(Thereupon the preceding answer was read by the Reporter as above recorded.)

Q. In other words, you knew that you had enough in there so that you could take it out through the hose?

A. I guess I could if I had wanted to.

Q. How many times did you ever visit the Seminole when she was up in Pilkington's Boat Yard?

A. Quite a number of times.

Q. What was the occasion of your going up there?

A. I was working on the Seminole; I was master of the Seminole, and I would go up there; if I had any work to do, I would go up there, or I would go up there and look around; I would go just at any time, just like anyone would; that was my business, you know.

Q. You were not master of the Seminole on any monthly basis, were you?

A. No; I was master of the Seminole; I was on the "papers" almost all of the entire time, and I was captain of the vessel just the same.

Q. You only received compensation for the time you actually worked as captain?

A. No; I used to work on the Seminole.

Q. What work did you ever do on the Seminole other than act as captain?

A. I acted as captain, and what work was needed I would do.

Q. Tell me something that you did.

A. I did a lot of painting; I painted underneath the decks and I would go over the boat and clean it out, and would go over and look the boat over; that was the nature of my ordinary duties.

Q. You really then were the main man in charge of the Seminole, is that right?

A. Yes, as far as working—as far as the working parts of the boat was concerned, I was in charge.

Q. When you were not on the payroll as captain and was not receiving any compensation, you didn't go up there and do any work, did you?

A. I always got paid for any work that I did on the Seminole.

Mr. Botts:

Will you repeat the question. That answer is not responsive to my question.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. That question, it seems to me, ought to be out, because I got paid for anything that I did; I got paid for anything that I did on the Seminole; I never went up and worked without money.

Q. Do I understand that you are answering my question in the affirmative? I would like to get an answer to my question.

Mr. Underwood:

If your Honor please, I think the witness has answered it.

Mr. Botts:

He is trying to dodge it.

Mr. Underwood:

He has not tried to dodge anything. The answer is fully responsive to the question.

Mr. Botts:

I would like to have the question and answer read and let the Court decide whether it is responsive or not.

The Court:

Suppose you read it again.

(Thereupon the preceding question was re-read by the Reporter as above recorded.)

The Court:

Do you think you can answer that yes or no?

The Witness:

No, sir.

The Court:

Why not?

The Witness:

I don't understand the question, Judge.

The Court:

Let him read it again, and if you can answer it yes or no, and then give your explanation.

(Thereupon the preceding question was re-read by the Reporter as above recorded.)

A. For no compensation, no.

(By Mr. Botts):

Q. Now, how many times, as near as you can tell, did you ever visit the Seminole while she was in storage at Pilkington's storage basin?

A. I couldn't tell you anything about that; I worked up there for two and a half months, went and come every day; I visited her so many times that it would be impossible for me to tell how many times I was there.

Q. Now you have stated that when you left the Seminole there the last time you instructed Captain Pilkington not to go into the engineroom or turn over the engines; am I right?

A. Yes, sir.

Q. Isn't it a fact, Captain Baker, that you gave him exactly those same instructions every time you laid the boat up?

A. We never discussed it previous to this time; that is the first time he ever asked me.

Q. That is the first time that was ever discussed?

A. Yes, the first time he ever said anything to me about it.

Q. What year was that when you worked that two and a half months up there?

A. 1930.

Q. 1930?

A. Yes.

Q. What did you do?

A. General work all over the boat.

Q. You got paid for that work?

A. I always got paid.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. That was when you were getting her ready for charter, wasn't it?

A. Yes, sir.

Q. And you refinished the decks?

A. Yes; painted them.

Q. You say you are still in charge of the Seminole?

A. Yes, in a way; I still have charge up there.

Q. Are you being paid for it?

A. I get paid, yes.

Q. By whom are you paid?

A. By the Seminole Boat Corporation.

Q. I want to ask you if you remember that hole in the bulkhead between the engineroom and the tank space as you went through to get under the tanks?

A. Yes.

Q. That was just a hole cut in the bulkhead, was it?

A. Yes.

Q. And that was at the floor level, wasn't it?

A. The level under the tanks was lower than the floor of the engineroom.

Q. I understand that, but I mean on the engineroom side this hole was at the floor level?

A. Yes, sir.

Q. And the top of the hole was just about level with the bottom of the tanks, wasn't it?

A. I guess it was cut as far as it could go.

Q. It appears here in Libelants' Exhibit 9, doesn't it?

A. Yes.

Q. And that shows that it comes up practically to the level of the holes where the valves of the tanks come through, doesn't it?

A. Yes, sir.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. You said that you were being paid for being in charge of the Seminole. Now I would like to have you tell us whether you are paid regular compensation the days when you would go up there and do something.

A. I got paid when I went up there and did anything. Do you remember where you were when the fire occurred on the 24th of June, 1935?

A. I was in Roslyn, Long Island.

Q. Had you been in the Seminole between the time you left her in Pilkington's in April and the time of the fire?

A. No, sir.

Q. Mr. Botts was asking you just now about the quantity of gasoline in the gasoline tanks when you were down on the Keys, whether you could run gas into the fishing boats by a hose. When was the last time you remember that being done?

A. I wouldn't know; I was out fishing, and I used to go fishing and some of the boats would come in to be gassed, so I wouldn't know; it was sometime down on the Keys—

Q. Did you yourself participate in the gassing of the boats?

A. Sometimes I would.

Q. And I take it that sometimes you would not?

A. Sometimes I wasn't even on the boat.

Q. Do you remember whether these tanks were used all at one time or in series?

A. Used them in series when we first started.

Q. Is it possible that when you gassed fish-boats—

Mr. Botts:

Just a minute. If the Court please, that question cannot be anything but a leading question. The Court, I am sure, understands what this question is going to be, and what it is designed for, and I object to that, because when he asks the question then the damage is done. Counsel knows that that is not a proper question.

Mr. Underwood:

I will withdraw it and put it another way.

Mr. Botts:

Let him testify and not you, if you don't mind.

Mr. Underwood:

I am scrupulously endeavoring to do that.

Mr. Botts:

Thank you; I hope you are successful.

Mr. Underwood:

Repeat the last question that was answered.

(Thereupon the preceding question was read by the Reporter as above recorded.)

(By Mr. Underwood):

Q. The last time that you observed any fish-boats gassed up by means of a hose, will you tell me what the level of the gas was in any tank?

A. I don't know.

Q. Can you tell me whether or not the level of the tanks was the same?

A. I couldn't do that either.

Mr. Botts:

You got your point and it wasn't proper, and you and I both know it.

Mr. Underwood:

I disagree with you. I am trying awfully hard not to lead.

Mr. Botts:

If you tried as hard not to testify, you would have done better.

(By Mr. Underwood):

Q. Do you remember how far down the after bulkhead of the engineroom went?

A. What?

Q. How near to the frames of the boat did the after bulkhead of the engineroom go?

A. I don't know.

Q. This space under the passageway, where there is some testimony that there were a number of pipes, water pipes and so on,—how far aft did that space go open before you came to a bulkhead that stopped you?

A. From the engineroom to the after-deck.

Q. Did the after bulkhead of the engineroom go all the way across the boat from the skin of the ship on one side to the skin of the ship on the other side under that passage-way?

A. No, sir.

Q. You said something yesterday, Captain Baker, about the details of what happened when you laid the Seminole up from time to time. I would like to ask you particularly about the details which you told us on this last occasion. Are you uncertain about anything that you said transpired at that time?

A. Well, naturally it was the last trip of the boat and it might be a little bit clearer than the others, but at this period, immediately after I was approached by Lloyd's and asked for a statement, it was very much in my mind at that time.

Q. I do not think we have it in the record quite clear just what kind of engines those were. They were Winton engines, I take it?

A. Yes.

Q. Describe them for us; what type of engines they were and the cylinders and—

A. Winton's; 125 H. P. each, with the very finest construction there was.

Q. How many cylinders?

A. Six; very smooth-running engines; they were the best engines that money could buy.

Q. Tell us whether or not in operation at speed those engines vibrated?

A. No, sir.

Q. Captain, what has been your experience under way in the Seminole as to any vibration in the hull from the effect of the sea?

A. She had no vibration from the sea.

Q. Now you said yesterday, in response, I think, to one of Mr. Matteson's questions, that you wanted to arrive at

Pilkington's with as little gas as possible. I would like for you to tell me the reason for that.

A. Well, I just wanted to get there with as little gas as possible, because on previous occasions when we would put the boat up with six or seven hundred gallons of gas, we would go back for it and it would have three or three hundred and fifty gallons, which is according to the records we have, and I didn't want that to happen.

Q. When you got back in October, 1935 to tow the Seminole to Miami, where did you find the Seminole?

A. She was tied up across the river from Pilkington's boat yard.

Q. How far from Pilkington's yard was she?

A. I would say 500 feet, or 600 feet.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Captain Baker, when you say some motors vibrate and some don't, it is entirely a relative thing, isn't it; they all vibrate some?

A. Very little on her.

Q. You never knew a motor that didn't vibrate at all?

A. Not very much; she had the least of any boat I was ever on.

Q. One other thing: I was trying to find the place in the written record of Schlappi's testimony, but I understood him to say that the after-bulkhead of the engineroom did go all the way across under the alleyway.

A. We had two air tanks on the side; our air tanks was on that (pointing) side of the engineroom, aft the engineroom; there were two air tanks under there aft the engineroom, and off the engineroom on the starboard side you

could go through where those holes were cut for these tanks; you could go through there, if necessary.

Q. You could go through there?

A. Yes.

Q. I understood from Mr. Schlappi (if I am wrong about this, you can correct me) that in order to get into this after space you had to go back and go down through a hatch in the after part of the space.

A. You could go through that hole if you wanted to crawl through; you could get through there, if necessary.

Q. How large was the hole?

A. About this big (indicating).

Mr. Underwood:

Indicating about two feet.

A. You could get through that if necessary.

Q. You would have to squeeze through?

A. Yes, you would have to squeeze through.

Q. The bulkhead itself went all the way across?

A. Yes, the bulkhead itself went all the way across.

Q. You are just speaking of the hole in the bulkhead?

A. Yes.

Q. Do you recognize this exhibit 19 as the starboard engine?

A. Yes.

Q. Then this picture is a picture of the starboard after end of the engineroom, isn't it?

A. Yes.

Q. I see a series of valves and pipes that run back to the bulkhead not far away from the engines, is that right?

A. Yes; they are the water manifolds; they are the bilge pumps.

Q. Where is this hole you speak of?

A. This hole was right here on the side; you couldn't go through the engineroom; but it was under that passageway right there (indicating); you could go through the

end down there; these air tanks were laid back in that corner (pointing).

Mr. Underwood:

Indicating to starboard of the manifolds?

The Witness:

Yes; this picture doesn't go that far. You can go all the way under that passageway; not under there (indicating), but you could go through on this side (indicating); these are the tanks over on the side down in this corner after the engineroom bulkhead, starting there.

Q. Were the tanks entirely aft the bulkhead?

A. Yes.

Q. Then there were pipes leading from the tanks into the engineroom?

A. Yes, sir.

Q. And this hole that you speak of, is that the place where the pipes came through?

A. No; the tanks are put in there that way (indicating). It was cut this big to put those tanks through.

Q. A hole was cut there so that the tanks could be placed back there?

A. Yes; it is under the passageway aft.

Q. Where could you get in that passageway?

A. You could get in anywhere on the side; it was all open; that steel bulkhead in the engineroom didn't go all the way down.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Just to get this clear, Captain Baker: did this partition between the passageway and the engineroom indicated

on Exhibit A go down in the engineroom any lower than the floor of the passageway?

A. No, sir.

Q. Now, you have spoken about the hole in the after engineroom bulkhead?

A. Yes.

Q. Is that where the air tanks were put through?

A. Yes.

Q. Will you indicate on this blueprint where they are?

A. Underneath this floor here (indicating).

Q. Indicating the accommodations aft of the engineroom?

A. Yes.

Q. Just show us the bulkhead in which that hole was cut.

A. This bulkhead was here (pointing), and these tanks were set underneath here (indicating); there were two tanks, air tanks.

Q. The tanks were underneath or amidships the alleyway immediately aft the engineroom and the room marked "state-room" immediately after that; is that right?

A. No. They are underneath this floor in the hull of the ship.

Q. In the bilge?

A. Yes.

Q. You say there was a hole in the bulkhead, through which these tanks were inserted, and through that you could go down here (indicating)?

A. No; you would have to come down here and go down (indicating).

Q. Indicating the space beneath the passageway in the bilge?

A. Yes, sir.

Mr. Underwood:
That is all.

(By Mr. Matteson):

Q. Just to add another detail: in this photograph, Exhibit 4-A, looking into the starboard forward corner of the engineroom, you will see the partition on the starboard side of the engineroom there; is that right?

A. Yes.

Q. You can see where it stays down at the lower part of this picture?

A. Yes.

Q. Was that the level of the alleyway on the outside?

A. The alleyway, yes; the batteries are piled up high in that corner; from that point up the skin was all open.

Q. How much space was there between the bottom of that partition and the floor of the engineroom?

A. Three and one-half feet; the same level as the main deck under the engineroom level.

Q. I don't think that is very clear. Can you say it definitely?

A. This (pointing) is the main deck.

Q. You are referring to the lower deck plan on this blueprint?

A. Yes, sir.

Q. Then the engineroom floor was three and one-half feet, we will say, lower than the passageway level. That is all down under there (pointing).

Q. Let me ask you this also; from this picture I would gather that the passageway level was about even with the top of the hole in the forward bulkhead through which you got into the space under the tanks?

A. I don't know.

Q. Doesn't this picture here show the opening into the space under the tanks?

A. I don't know.

Q. They appear in this picture to be about the same level, do they not?

Mr. Underwood:

I object to what the picture shows; the picture speaks for itself.

The Court:

He can just state of his own knowledge.

A. I don't know; I just don't remember that; I just don't remember.

Q. You would not state that wasn't the fact?

A. No, I wouldn't say that wasn't the fact.

Q. On this upper deck plan are these little circles up there (pointing), do they represent cowl ventilators?

A. Yes.

Q. And this shows their relative position from the engine room?

A. Yes, sir.

Q. Suppose I mark this cowl ventilators?

A. All right.

Mr. Matteson:

That is all.

(By Mr. Botts):

Q. Captain Baker, did I understand you to say that one year you stored the boat at Pilkington's yard and when you came back there was gasoline missing?

A. Yes.

Q. What year was that?

A. I couldn't tell you; I think there were a couple of years.

Q. I see. Did you complain to anyone about that?

A. I surely did one year.

Q. To whom did you complain?

A. To Mrs. Pilkington?

Q. To Mrs. Pilkington?

A. Yes.

Q. How much gas was missing that time?

A. We figured we had lost 300 gallons.

Q. Did you mention that matter to your owners?

A. No, sir; I never said a word to the owners.

Q. You never said a word to anybody about it?

A. No; I never said a word to the owners.

Q. You thought that that was a circumstance that they were not interested in?

A. That's right.

Q. You didn't mention it to Captain Pilkington?

A. No, sir; he wasn't there; Captain Pilkington was away from that yard quite awhile.

Mr. Botts:

That is all.

By Mr. Underwood:

Q. Did you have anything to compare the amount of gasoline that was in the boat when you went to take her out with the amount of gasoline that was in the boat when you left it there?

A. The engineer always kept a log; it was always left on the desk; every time the boat was left there it would be put in the log; the running time per day, the amount of gas used daily and everything would be put in the log and left on this desk; it was always there.

Q. Was it a practice to make any note in there as to the amount of gasoline?

A. Always noted what was left when the boat was left there and what was there when we went back.

Mr. Underwood:

That is all.

Mr. Botts:

I have no further questions at this time.

Mr. Matteson:

No further questions.

Mr. Underwood:

That is all I have at this time of this witness.

(Witness excused.)

2602 Thereupon: ALLEN SIMMON was called as a witness in behalf of the Respondent Phipps, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name?

A. Allen Simmon.

Q. Where do you live?

A. Miami.

Q. What is your business, please?

A. I am with the First Federal Savings & Loan Association.

Q. Once upon a time, Mr. Simmon, you worked at the Miami office of one or more companies that the Phipps' family had an interest in, did you not?

A. Yes.

Q. When did you start in there?

A. I think it was about 1926.

Q. About when did you leave there?

A. October, 1931.

Q. For what company did you work?

A. I don't know.

Q. Who paid you?

A. Well, the checks were always made by L. M. Handley, paymaster.

Q. What was the name of the office at the time?

A. 1317 Biscayne Boulevard.

Q. What was the nature of your general work?

A. Well, I did some buying, and also some clerical work.

Q. Did you have anything to do with the Seminole while you were there?

A. Yes, at various times.

Q. Do you remember the time when the Seminole Boat Company was incorporated?

A. Yes.

Q. I am not asking you for the year, but do you remember that such a thing happened?

A. Yes.

Q. Prior to that time who was in charge of the office?

A. Paul Scott.

Q. After that time and until you left who was in charge of the office?

A. Mr. Scott.

Q. During all the time that you were there did you have anything to do with the Seminole?

A. Yes.

Q. In general what did you have to do with it?

A. Well, mostly I was concerned with the purchase of supplies and materials.

Q. What was the balance; in a general way?

A. Beg pardon.

Q. What was the balance in a general way; you say "mostly purchasing"; what was the rest?

A. Anything that I had any instructions to do.

Q. Where did your instructions come from?

A. From Mr. Scott.

Q. Now, Mr. Simmon, do you have any recollection of any work that was performed on the Seminole in the year 1927?

A. Yes.

Q. Who was captain of her at that time?

A. Captain Nelson.

Q. Where was the work done?

A. At Merrill-Stevens Boat Yard.

Q. What was the general nature of the work?

A. General overhauling of the vessel; the entire bottom was torn out and replaced, and the water tanks were removed, that is, their location was changed; they were re-welded, and the gasoline tanks were taken out and re-welded and replaced, and new feed lines were put in, and new plumbing lines were put in, and some new electrical wiring was put in, and there was a cabin built on the deck, and all of the wood-work on the sides was replaced wherever it was bad, wherever the wood was rotten, and of course it was painted inside and out.

Q. Do you remember how long she was there for that work?

A. I think it started the first part of August and was finished sometime the following January.

Q. The following January?

A. Yes.

Q. I show you a file of bills, Mr. Simmon; can you identify those as having anything to do with this work?

A. Well, I think that these bills that covered the work, or most of it, anyway.

Q. Do you remember whether you saw these at the time?

A. Yes.

Q. Do some of these bills bear your initials?

A. I don't know; I suspect they do; five or six of them do, I believe.

Q. Without taking time to run through them all, I show you a bill dated September 17, 1927, for a total of \$4,442.78 in typewriting; are these words and figures "okay for payment as corrected AAS"; is that in your handwriting?

A. Yes.

Q. Have you been through these bills and totaled them up?

A. Yes.

Q. What is the total amount?

A. \$27,124.93.

Q. Are you reading from a yellow sheet of paper on top of this group?

A. That is right.

Q. Do you remember when that was made up?

A. Shortly after December 31, 1927.

Q. Who made it up?

A. I did.

Q. These are your figures?

A. Yes.

Q. How was this work done; was it by contract or otherwise?

A. It was done on a labor and material basis.

Mr. Underwood:

I offer the bills in evidence.

Mr. Matteson:

I haven't had an opportunity to examine them, if your Honor please.

Mr. Botts:

Suppose they go in subject to an objection to be made later, just like we did the others?

The Court:

They are admitted subject to objections hereafter to be made, if any.

Mr. Underwood:

Let the record show that there are in here attached to some of these blue carbon copies of apparently original vouchers of the Boulevard Mortgage Company.

Mr. Botts:

That is all right; whatever the file is, it is:

(Thereupon the file of documents above referred to were marked Respondents' 4-L.)

Q. Mr. Simmon, have you been through these bills recently to pick out how much they include for certain items?

A. Yes, sir.

Q. Does this adding machine tape show how much was included in these bills for certain things?

A. Yes.

Q. How much?

A. Pipe and fittings, \$173.05.

Q. Have you figured the total labor charge?

A. Yes.

Q. What was that?

A. \$17,003.01.

Q. I show you some papers which are apparently Merrill-Stevens Dry Dock Company bills. Will you tell me whether or not you recognize those?

A. Yes, sir.

Q. For what boat was that boat done?

A. Seminole.

Q. Do you know whether that was a part of the same or some different job?

A. I think this is finishing up of the same job.

Q. The figures in this last group which I hand you are not included in the totals you have given us?

A. No, sir.

Mr. Underwood:

I offer these in evidence.

Mr. Botts:

With the same understanding.

The Court:

Same ruling.

(Thereupon the file of documents above referred to was marked Respondents' Exhibit 4-M.)

Q. Did you at any time in the vicinity of 1928 make a calculation to ascertain the amount of the expenses on the Yacht Seminole for a period of time?

A. Yes, sir.

Q. Do you remember what that period was?

A. I think it was for a period of about two years, but I may be mistaken.

Q. I show you two sheets of analysis paper; can you tell me whether or not they refresh your recollection?

A. Yes; I rely on the dates shown here, July 6, 1926 to June 21, 1928.

Q. In whose handwriting are these two sheets?

A. Mine.

Q. Were they accurate when you made them?

A. To the best of my knowledge they were.

Q. Did they correctly show the amount spent during that interval for the various things stated?

A. I believe it does.

Mr. Underwood:

I offer this in evidence.

Mr. Matteson:

I think that is subject to some explanation: is this a summary of what is in the other bills?

The Witness:

It includes those other items, but there are also some other expenditures that are not included in those bills; it covers a longer period of time and greater amount of expense.

Mr. Matteson:

Mr. Underwood, is this a statement of what the books show?

Mr. Underwood:

I will ask the witness.

(By Mr. Underwood):

Q. What did you get your information from when you made up these two yellow sheets?

A. Original invoices.

Mr. Matteson:

That is a statement of what the original invoices show?

Mr. Underwood:

Yes.

Mr. Matteson:

If that is the purpose, I have no objection.

The Court:

Let it be admitted.

(Thereupon the statement above referred to was marked Respondents' Exhibit 4-N.)

Q. Did you later on, Mr. Simmon, make another calculation as to the expenses incurred in connection with the Seminole?

A. Yes, sir.

Q. Do you remember now what periods you covered?

A. I think it was a comparative statement covering possibly about three or four years.

Q. I show you six typewritten sheets of paper; does that refresh your recollection?

A. Yes.

Q. Who made up that tabulation?

A. I did.

Q. Did you make the calculations?

A. Yes, sir.

Q. Were they accurate when you made them?

A. Yes, I thought so.

Q. What was the source of your information?

A. Original invoices.

Q. Does the statement correctly show the amounts for salaries, wages, repairs and maintenance, operating expenses, dockage, furnishings and equipment and insurance for the years 1926, 1927, 1928, 1929 and 1930 to June 30th?

A. I believe that it does.

Mr. Matteson:

As revealed by the documents he consulted?

Q. Does it also accurately show the income from charters?

A. Yes, I believe it does.

Q. You made this up yourself?

A. Yes, sir.

Q. At that time?

A. Yes.

Mr. Underwood:

I offer this.

Mr. Matteson:

If it is a statement that was revealed by the records, I have no objection to it.

The Court:

I understand that that is the purpose for which it is submitted or offered.

Mr. Underwood:

I offer it for everything that it shows, your Honor.

Mr. Matteson:

If it is anything more than a statement of the records, of course, it is not the original record and is not the best evidence, and there has not been anything shown to show that the witness has personal knowledge of the items.

The Court:

I will admit it for that purpose. If there is anything further about it, we will consider it on the final hearing.

(Thereupon the statement above referred to was marked Respondents' Exhibit 4-O.)

Q. Mr. Simmon, during what part of the time covered by Exhibit 4-O did you have anything to do with the Seminole?

A. During the entire time.

Q. Were you familiar at that time with any work that was done on the Seminole?

A. Yes, sir.

Q. Whose task was it in those days to look over the bills as they came in?

A. Mine.

Q. Who approved them for payment?

A. I did.

Q. Did you or did you not know what work was being done during those years?

A. Yes; generally I was supposed to know what was going on.

Q. Now on Exhibit 4-O, the third sheet entitled "operating schedules", I call your attention to the third item which reads "Overhauling and repairing lighting system, including Edison batteries, generator and wiring, \$330.38;

do you have any recollection as to what work was done at that time?

A. Yes; there was some wiring in the boat that had never been placed in conduit; in other words, it was well—it was of course insulated wire, but it wasn't fully protected, so all wiring was replaced and placed in conduit or wire mold.

Q. What does that amount of \$330.38 include?

A. It includes only material.

Q. We are not clear about that; you use the word "conduit" and you used the words "wire mold"; I am not sure whether you used the conjunctive or disjunctive between; will you please tell us about that?

A. Well, I think this particular material referred to both; the wire mold, as I referred to it, consists of a metal base and a metal covering; it is U-shaped covering with a flat metal base.

Q. That is what you refer to as wire mold?

A. Yes.

Q. By "conduit" to what do you refer?

A. Conduit is a round pipe.

Q. Which of those does that figure of \$330.38 include?

A. Well, a certain amount of both.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. This document which has been marked Phipps' Exhibit 4-M, Analysis of expenditures for the Yacht Seminole, July 6, 1926, to June 21, 1928,—for what purpose was that made up?

A. It was made up for the purpose of showing the total expenditures for that period on the boat.

Q. For what purpose was such a statement required?

A. It was required for Mr. Scott.

Q. Prior to that time Captain Nelson had been in charge of the boat, had he not?

A. That is correct.

Q. Was this statement gotten up in connection with the checking up on Captain Nelson?

A. No, sir.

Q. It was about the end of the period that you indicated on that statement that Captain Nelson was discharged, was it not?

A. No; I think that was prior to that time; I think he left as Captain of the Seminole prior to that time.

Q. Captain Nelson was in charge of the repairs that were made at Merrill-Stevens, was he not?

A. Yes, sir.

Q. And he approved the expenditures before they came to you, didn't he?

A. Yes; I think he checked the bills before I got them.

Q. And when you approved them you relied on his okay?

A. Not entirely; no.

Q. That is, I take it, you had a general familiarity with what was going on, but you relied on him for details, is that right?

A. That is correct.

Q. And the work was done under the direct supervision of Captain Nelson?

A. Yes.

Q. Take this account of Merrill-Stevens aggregating about \$27,000.00, Respondents' Exhibit 4-L, charging a total of \$27,124.93; is that the amount that was paid to Merrill-Stevens?

A. It wasn't the total amount by any means; it was the amount that was paid from the beginning of this one large repair operation until December 31 of that year.

Q. That amount represented on the recapitulation at the top of the bunch of papers was actually paid to Merrill-Stevens?

A. Yes, sir.

Q. Was any part of the afterwards refunded?

A. Not that I know of.

Q. It is a fact, is it not, that there were financial irregularities discovered in connection with this job and Captain Nelson's connection with it?

A. I don't recall that they were uncovered in direct connection with this job; they were perhaps suspicioned, but I don't think they were actually uncovered in connection with this job.

Q. It was found that in connection with some of the matters which Captain Nelson handled for the Seminole that he had been making a profit personally out of the work, isn't that a fact?

A. That is correct.

Q. And it was for that reason that he was discharged?

A. Yes.

Q. I take it, Mr. Simmon, that as far as this work represented by this bill is concerned, you never were able to get at the bottom of the matter?

A. No; as far as we could find there was no irregularities in this work.

Q. Did Captain Nelson make some restitution in this connection?

A. Not that I know of.

Q. Now in introducing this Exhibit 4-L you made a preliminary statement as to what you understood the work covered and I think you mentioned, among other things, the removal and replacement of the gasoline tanks. Will you point out to me where that is indicated in this file of bills?

A. I don't know that I can point to any particular items in here. I can point to items that covered that, that is, you will find items in here for oxygen and acetylene which

was used in welding, and you will find items for boiler-makers' labor, and also for welders' labor used in that and other welding operations.

Q. Let me ask you this: there was other welding and cutting done on the Seminole that did not relate to the gasoline tanks?

A. Oh, that is right.

Q. And that was true with respect to the bottom and the sides of the boat?

A. Well, they were mostly riveted; as far as I know they were practically all riveted.

Q. Can you tell us whether or not the plates of the Seminole were welded in place?

A. I know that they were welded around the engine-room and up the sides; as to whether they were welded entirely over the bottom I don't know.

Q. There was considerable welding in connection with the bottom and side plating of the Seminole at that time, is that right?

A. Yes.

Q. In connection with the job all the old riveting on the old plating was cut out by burning, was it not?

A. All taken completely out.

Q. Were you familiar with the details of that personally, or just in a general way?

A. Well, I visited the yard quite a few times during the course of the work and saw what was going on, and have a general idea of what they did.

Q. But the man who was in direct supervision was Captain Nelson?

A. Yes; he was supposed to be there all the time.

Q. Do you know whether or not any trays were made for the gasoline tanks at that time?

A. Yes, sir; there were two trays made for them.

Q. Were they welded, do you know?

A. They were made out of zinc, and I think they were welded, yes.

Q. Do you know of your own knowledge that there was any welding done on the tanks themselves at that time?

A. Yes, I do.

Q. Now just where was this welding on the tanks?

A. In all of the seams; the seam on the bottom of the tank and up each side, as I recall it.

Q. Now, Mr. Simmon, do you say that all of the seams of the gasoline tanks were welded at that time?

A. Yes, sir.

Q. Of course it would be possible to determine it by inspection even now, wouldn't it?

A. I don't know.

Q. You have not had any shipyard experience yourself, I take it?

A. Oh, no.

Q. Or any experience in the construction of tanks, is that right?

A. No, I haven't had any instructions in that.

Q. I mean, Mr. Simmon, as far as ship matters are concerned you are a layman like the rest of us?

A. Yes, sir.

Q. I will ask you whether from such general knowledge you had of this job you are now in a position to say definitely that the seams of the gasoline tanks were actually welded at that time?

A. Yes, I think they were; I am fully convinced they were.

Q. Where was the welding on the tanks; by that I mean was it done on the boat or on the shore?

A. No; at the time that was done both the water and the gasoline tanks were taken out and that work was done on the side of the boat; it was on the ways on the side of the boat, right beside the boat; the work was done right there.

Q. Was the deck of the boat taken off at that time?

A. No, I don't believe it was; pieces were taken of, but I don't think—there must have been some bad wood, rotten wood, that had to be taken out and replaced, but not the deck as a whole.

Q. The deck over the tank compartment consisted of steel plating, did it?

A. Over the engineroom, I believe.

Q. And that wasn't removed?

A. No, I don't believe it was.

Q. Do you know in what manner the tanks were removed from the tank compartment at that time?

A. It wasn't very much trouble about it; the whole bottom was out of the boat.

Q. I take it that the frames were still there?

A. What?

Q. The frames of the boat were not removed, were they?

A. Not all of it; a great deal of it was good.

Q. Do you know what I mean by frames?

A. You mean ribs?

Q. Yes.

A. Yes.

Q. The ribs of the boat were not removed at that time?

A. Part.

Q. What part?

A. Wherever they were badly enough rusted.

Q. That doesn't tell me very much.

A. I couldn't tell you what individual ribs were taken out.

Q. Can you tell me what part of the ship's ribs were taken out?

A. No; I couldn't say that they were taken out of any specific portion of the boat, but they were removed as it seemed necessary; certain ribs were pretty well gone by corrosion and those had to be replaced; others that were all right, they were left in.

Q. Were any entire ribs removed or just partly?

A. I couldn't say just now.

Q. Mr. Simmon, if the deck wasn't removed and the ribs were not removed, the tanks could not be removed out of the tank compartment any further than the engine-room, could they?

A. I don't know why they couldn't; the entire side wall on one side of the engineroom was off, and entirely open.

Q. You say they cut open one whole side of the ship in the way of the engineroom at that time and put the tanks out through the space where the side of the ship had been?

A. I don't know just how they took them out, but the tanks were taken out of there.

Q. As a matter of fact, Mr. Simmon, you can't tell us just what openings were made in the hull of the ship at that time, can you?

A. Only to this extent: that at that time the entire bottom was off.

Q. When you say the entire bottom was off, you refer to the plating, do you not?

A. That is right.

Q. Even if the plating is removed you still have the ribs of the ship?

A. Yes.

Q. Do you know how wide the ribs of the Seminole are spaced?

A. I don't recall exactly, but I would think they were apart 30 inches possibly, although I didn't measure them.

Q. How big were these gasoline tanks; can you tell us that?

A. I haven't any idea.

Q. Where were they when you saw them?

A. Oh, opposite the boat; right beside the boat, fairly close to the boat; on the ways at Merrill-Stevens.

Q. In what shape were they?

A. They looked pretty good when I saw them.

Q. I do not mean condition; I mean shape.

A. They were cylindrical tanks.

Q. How big?

A. Anything I might say about the size would be purely a guess, because I haven't any idea about the measurements of them; it is merely my memory of what they looked like ten years ago, and that is fairly unreliable, I would think.

Q. That is equally true of your recollection of all the details of this work, is it not?

A. No, I cannot say that it is.

Q. Except as it is represented by accounts that you referred to, that would be true, wouldn't it?

A. No; I have certain features in mind; there are certain features that you would remember, because it would make more of an impression on your mind.

Q. Which are the features that so impressed themselves on your memory back ten years ago?

A. One big feature was visiting the yacht there and being able to look through the entire yacht with the exception of the paneling around the cabins.

Q. When you say the entire bottom was off, you are referring to the steel plating?

A. Yes.

Q. I suppose it looked something like the skeleton of a whale at that time?

A. Just about.

Q. Where was the Seminole at the time this work was done; I mean where was it in Merrill-Stevens?

A. It was on the largest ways, and they were located between what is now the main building and the bridge south of there.

Q. You say she was on the ways—exactly what was it she was on?

A. What?

Q. You say she was on the ways; was she on a cradle or rails or had she been moved off to one side?

A. She was on the ways practically all of the time she was there.

Q. By "ways" you mean on the cradle which was on rails?

A. Yes, sir.

Q. There was no contract for this work, I take it?

A. No.

Q. If it was done under the direction of Captain Nelson, the various things that were done were done by his orders, is that right?

A. Yes.

Q. So that there was no contract on the part of Merrill-Stevens to do any specific work other than as items were ordered by Captain Nelson?

A. That is right.

Q. As far as having the necessary work done or as to what was to be done, you relied on Captain Nelson's decision, is that right?

A. To a certain extent; the work that was to be done was mapped out in advance or planned in advance in a general way.

Q. By whom?

A. Captain Nelson presented the original request that the work be done and an estimate of what it would cost.

Q. What was that estimate, do you recall?

A. Well, as I recall it, it was about \$30,000.00; between twenty-five and thirty thousand dollars.

Q. How much did the job finally cost?

A. About thirty-seven or thirty-eight thousand dollars, as I recall it.

Q. Who approved Captain Nelson's plan?

A. Mr. Scott, I believe.

Q. With whom did Mr. Scott consult about it, do you know?

A. I don't know.

Q. Mr. Scott was the representative of the Phipps' interests here at that time?

A. As far as I was concerned his word was the final word.

Q. He was your boss?

A. Yes.

Q. He was the boss of everybody in that office, is that correct?

A. That is correct.

Q. And he was the representative of the Phipps' interests in Miami at that time?

A. I don't know.

Q. You know that he attended to various personal business affairs from time to time for them?

A. No, I couldn't say that I do.

Q. Who was the owner of the Seminole at that time; do you know?

A. John S. Phipps.

Q. That was your understanding?

A. Well, I know that because it was recorded that way at the Customs House.

Q. Did you have anything to do with that?

A. Yes, I recorded the papers when it was entered in the port of Miami.

Q. Did you have anything to do with the preparation of the papers?

A. No.

Q. Who gave you the papers to be recorded, do you recall?

A. Mr. Scott.

Q. And they had been executed by Captain Nelson, had they not?

A. I don't recall.

Q. Do you recall the alleyway that went past the engine room on the main deck of the Seminole?

A. You say on the main deck?

Q. We will say the lower deck; I will put it that way.

A. Yes.

Q. As you went along that alleyway there was a partition on the side between the engineroom, separating the alleyway from the engineroom, was there not?

A. Yes, sir.

Q. Was there any paneling or woodwork on that partition, do you recall, or was it painted steel plate; I think that was all steel work.

Q. You don't recall seeing any workwork there?

A. No, I don't; there was a window in it; I remember that.

Q. A window leading into the engineroom?

A. Yes.

Q. And there were also windows leading from the passageway to the outside of the ship?

A. Yes, sir.

Q. Did you have any conferences with Mr. John S. Phipps with respect to this work that was done at Merrill-Stevens?

A. No.

Q. This work in this second batch of vouchers that was introduced and marked Phipps' Exhibit 4-M,—that was prior to the work represented by the vouchers in this batch marked 4-L, was it not?

A. Yes, I believe it was; some of it was prior and some subsequent.

Q. So this bunch which has been marked 4-M is just a series of miscellaneous bills, some before and some after the big job at Merrill-Stevens, is that right?

A. Yes.

Q. Now this Exhibit 4-O, comparative statement of operations from 1928 through 1930,—for what purpose was that made up?

A. That as I recall it, was made up at Mr. Scott's request to show a comparison between the cost of opera-

tions prior to the organization of the Seminole Boat Company and subsequent.

Q. There is nothing about the statement that indicates that, is there?

A. Not on its face.

Q. It is a running statement that runs from 1928 through 1930?

A. That is right.

Q. And there is no indication on this statement whatever to indicate the division point between the date of incorporation and the date subsequent, is that right?

A. I do not see any on here.

Q. So as a comparative statement between the date of incorporation and afterwards, we can't make any comparison unless you insert the date of incorporation at the proper place, can you?

A. No.

Q. And if you insert the date of incorporation you would have to insert it in the middle of one of the years, would you not?

A. I just don't recall when the operations were begun or were taken over by the Seminole Boat Company; whether it was in the middle of the year or not.

Q. There is a discrepancy here that I do not quite understand. This Exhibit 4-N shows a total of expenditures on the boat Seminole from July 6, 1926 to June 21, 1928, of over one hundred thousand dollars, but on this comparative statement that you have, if you total all of 1926, 1927 and 1928, you will still be well below the one hundred thousand total. Can you explain to us the reason for that discrepancy?

A. Yes, in a general way: This statement here eliminates practically all of the extraordinary repairs, betterments and additions.

Mr. Underwood:

Indicating that Exhibit 4-O eliminates the data referred to on the top line of Exhibit 4-N.

The Witness:

Yes.

By Mr. Matteson:

Q. I do not quite follow you on that, because the data on the top line of 4-O totals \$45,000.00 and the data under the same heading "Repairs and maintenance, statement of operations," totals, just by mental arithmetic, forty-two or forty-three thousand dollars.

A. Yes. I said most of this amount here has been eliminated from this statement here.

Q. You say that most of the items on the top line of 4-N has been eliminated from 4-O, is that correct?

A. That is correct.

Q. I still do not quite follow that, because you do have in the comparative statement about forty-three thousand dollars, whereas the item on the top line of 4-O "Extraordinary repairs", and so forth, totals \$45,000.00 and there is only a difference of \$2,000.00.

A. This statement is supposed to be a comparative statement of operations and as such does not properly include, from an accounting standpoint any of the extraordinary repairs, betterments and additions.

Q. In your statement of repairs and maintenance in the comparative statement of operations, you do have an item of \$35,974.00 in the year 1927?

A. Yes.

Q. Do you say that that was only ordinary current repairs and maintenance?

A. I would not say that it was only ordinary current repairs, but it certainly consists of repairs necessary for the maintenance of the boat, and doesn't consist of "Better-

ments and additions", which is ordinarily to be considered a capital expenditure.

Q. It must be the fact that by comparing the two statements, Mr. Simon, that the major portion of this item of \$45,000.00 on 4-M is carried in to this \$35,000.00 on 4-O, is that right?

A. That is entirely possible.

Mr. Matteson:

If your Honor please, I would like to have an opportunity to study these statements that have been submitted; it is hard to analyze them quickly, and I think the witness will be available.

Mr. Botts:

Maybe I can ask him a few questions.

The Court:

All right.

Mr. Botts:

I am sure he will be here the rest of the day.

The Court:

All right; you may proceed.

Cross Examination.

By Mr. Botts:

Q. Mr. Simon, do you recall who was superintendent of Merrill-Stevens at that time?

A. Superintendent, you say?

Q. Yes.

A. Mr. Thebault.

Q. That is Ed Thebault?

A. Yes.

Q. Do you know whether Ed Thebault is here or not or where he is; do you know whether he is living or dead?

A. Someone told me he was dead.

Q. I heard that too. I just wanted to find out and that—

A. That is what I heard.

Q. With reference to the gasoline tanks, Mr. Simon, do you have any idea at all about how large these tanks are?

A. This is purely a guess, but just as I remember the tanks, it seems to me that they were possibly three feet in diameter or thereabouts, and possibly five feet or a little more in length.

Q. That is your best recollection?

A. Yes, sir.

Q. How many of those tanks did you see?

A. Four.

Q. Now, how many times did you visit this shipyard during these operations, do you recall?

A. I don't recall.

Q. Well, do you know how frequently you visited it?

A. I tried to get there several times a week.

Q. Your best recollection is that you went there several times a week on an average?

A. That is right.

Q. Now, Mr. Simmon, do I understand that the entire plates were taken off of the bottom and sides of the Seminole wherever there was still plates?

A. Yes, sir.

Q. Do you know whether those steel plates were discarded and new ones put on, or whether the old ones were replaced?

A. No; it was all new steel that was put on.

Q. All new steel?

A. Yes.

Q. Now, I am no more nautical than you are; maybe we will have to explain what we are talking about sometimes, but let's try to get together.

A. All right.

Q. The ribs of a ship, as I understand it, are the members, either steel or wood (in this case steel) that go down around the bottom of the ship from one side to the other and to which plates are fastened.

A. That is what I have always thought.

Q. All right, then we are together on that.

A. All right.

Q. Now Mr. Simon, do you have any recollection about the size of the ribs in the Seminole, the size of the steel, I will put it?

A. Well, I will say they were possibly quarter to three eighths of an inch thick, and as I recall they were double angle irons.

Q. Now by "double angle irons" do you mean a piece of steel that would be roughly in the shape of a "T" when they are put together?

A. That is right.

Q. Two irons at right angles to each other were placed together so that it made a T-shaped steel arrangement?

A. Yes.

Q. Now then the part of this angle iron which would be next to the plating of the ship would be what was the top of the "T", is that right?

A. The flat part, yes.

Q. Then what would correspond to the stem of the "T" would run in towards the inside of the ship?

A. Yes.

Q. Now, Mr. Simon, do you recall what would be the width of the "T" part of this structure of the ribs; would it be six or how many inches across?

A. Of course this is a guess, but I would say about four to four and a half inches.

Q. About what would be the length or what would correspond to the stem of the "T"?

A. Half of that dimension probably; two and a half to two inches.

Q. And this steel was molded into the shape of the ship so that the combined shape shown by these ones replaced was roughly the shape of the hull of the ship, is that right?

A. Yes.

Q. Now how many of these ribs were removed from the ship during this operation, do you know?

A. I wouldn't have any idea.

Q. Were any of them entirely removed or was it just pieces here and there?

A. I don't know that any of them were entirely removed.

Q. It would be a piece cut out with an acetylene torch or something like that and another piece set in its place; is that the way it was?

A. Yes.

Q. And this new piece would be welded into place?

A. Yes.

Q. Now do you have any recollection at all as to whether there were three or a dozen or more than a dozen of these sections or ribs removed and replaced?

A. It was quite a large number; I would say it was at least half of them.

Q. You think that perhaps half of the ribs had sections removed?

A. Yes, sir.

Q. And replacements made?

A. Yes, sir.

Q. Did you ever see any of these ribs when they had been cut and were ready for replacements?

A. I presume I did; I was there during practically the entire time of the repairs.

Q. Do you have any recollection as to the length of the pieces that were removed?

A. No, but I judge it was a pretty good size; the boat was about, I suppose, forty to forty-five feet wide, something like that.

Q. What was the largest piece that you can recall that you saw taken out?

A. I wouldn't have any idea; they were varying lengths.

Q. Give us the maximum length.

A. Possibly ten or twelve feet, and that is purely a guess.

Q. Now then these pieces would be taken out at random wherever the rusting process had advanced so far that it seemed to be necessary?

A. Yes.

Q. Now do you recall that around the vessel from the bow to the stern, and at the top of the ribs there was a longitudinal stringer that went from the bow to the stern of the vessel, and to which the upper ends of the ribs were attached by welding or otherwise?

A. Yes, sir.

Q. Now do you know the name of that steel part that I have described?

A. No, I don't believe I do.

Q. If anyone should call it "deck stringer plate", you would be willing to accept that as being the name for it?

A. I expect I would.

Q. Well, we will refer to it until we are better advised as to it. We will refer to it as a deck stringer plate. Now, no part of that was renewed, was it?

A. Not as far as I remember; no, sir.

Q. That was a piece of steel considerably heavier than the ribs, wasn't it?

A. It should be.

Q. And none of that was taken out?

A. (No audible answer.)

Q. Now, did you observe the operation of removing these tanks from the tank room?

A. No.

Q. You didn't see them when they were taken out or when they were put in?

A. No, not at any time that I recall.

Q. Do you know whether or not the steel wall around the engineroom was removed?

A. Yes, it was.

Q. They removed that wall?

A. Yes, clear up to the deck level.

Q. On both sides?

A. Both sides.

Q. Do you know the purpose of doing that?

A. Sir?

Q. Do you know the purpose of doing that?

A. Putting in the new plates?

Q. Do you know what supported the steel deck when these walls were out from under it?

A. They had so many props around there, that I expect they had some for that; the thing was practically in a cradle.

Q. Now you have stated that there was some zinc pans underneath these tanks.

A. Well, they were put there at this time, I believe.

Q. Now what makes you think that they were zinc?

A. The reason is that I remember we bought some zinc plates for that purpose.

Q. Did you see these pans after they had been constructed?

A. I saw them when they were being made there on the dry-docks.

Q. Do you recall the shape?

A. Yes, generally they were flat pans.

Q. With a turned up edge?

A. Yes.

Q. How high was that edge, turned up, do you remember?

A. Oh, I would imagine maybe six inches, or maybe a little less.

Q. How thick was the metal on these pans?

A. I don't remember what thickness it was.

Q. What was the shape of the pans; I mean were they the shape of this table or the shape of the tanks, or what was the shape of them?

A. In general they were rectangular pans, two pans, one under each two tanks, and it was designed to do that.

Q. They had square corners that extended out so as to encompass the circular tanks, is that right?

A. Yes; that is my recollection.

Q. How many of these pans do I understand there were?

A. Two; there was one for two tanks on one side and one under the tanks on the other side.

Q. Were these pans solid metal?

A. Yes, sir.

Q. Upon what did these pans rest?

A. I think there were some steel cross members on a sort of platform that they rested on.

Q. By platform, Mr. Simon, do you mean wood or metal?

A. Metal, as I recall it.

Q. There wasn't any wooden floor underneath there?

A. No, not that I remember seeing; I think there was some wood on top of the pans, between the pans and the tanks as I recall it.

Q. How could you see them?

A. They were placed on top.

Q. On top of what?

A. Inside the pans.

Q. Did you see them in there; did you see this wood in there?

A. Yes, I think so.

Q. When they were putting the tanks in?

A. No, I believe they were in there.

Q. How could you see them?

A. There is an opening that you could get in there through.

Q. Was the bulkhead taken down forward and aft of the tank locations also?

A. I believe it was replaced between the—I don't know what forward and aft is; I don't know what you mean by that.

Q. We will say towards the bow and towards the stern?

A. I am not sure of the location, but I think the steel bulkhead was replaced between the engines and the tanks, but not the other bulkheads, as well as I recall.

Q. Your best recollection is that the bulkhead which would be forward of the tank compartment wasn't replaced in steel?

A. It wasn't replaced at that time; I think there was a steel bulkhead before that.

Q. After the tanks were placed in there that steel bulkhead wasn't replaced, is that right?

A. The original bulkhead was left in there; I mean it wasn't taken out and a new one put in there.

Q. Then the steel bulkhead forward of the tank location wasn't taken out at all?

A. You mean the one between the tanks and the rest of the boat?

Q. Yes.

A. No, the one between the tanks and the engineroom was replaced.

Q. With a new one?

A. That is right.

Q. Now what about the steel supports underneath the tanks; were those renewed or did they stay there?

A. They were "new"; before this work was done the tanks had been at a much lower level, and they had great difficulty in getting the gasoline to properly feed when

the gasoline got low in the tanks, so they were raised at this time to overcome that difficulty.

Q. Where were the tanks while these new supports were installed? Where were they?

A. I imagine that was before they were replaced; I don't remember where they were at that time.

Q. Did you see them while they were replacing the tanks into their locations?

A. You mean while they were in the process of being put back in?

Q. Yes.

A. No.

Q. You saw no part of the process of taking them out or putting them back in?

A. I don't recall seeing that. I remember that I saw them before they were taken out and I saw them after they were taken out and after they were put back in.

Q. As I understand it, you did not see any of the process of welding the tanks?

A. I wouldn't say that I did; I couldn't say that I didn't either; I don't remember.

Q. You have no recollection on that point at this time at all?

A. No.

Q. Then your statement some time ago that they were welded is not based on anything that you recall?

A. It is not based on any remembrance of the actual operation of the welding job, no, but I saw the tanks before they were taken out and I saw them when they were ready to go back in, and I saw them after they were back in there, and I know they were completely cleaned out, and in order to do that they certainly had to take them out of there.

Q. How do you know that they were completely cleaned out?

A. For instance, Captain Nelson showed me a lot of residue and stuff there that he knocked out of the tanks.

Q. Then do I understand you to say that the tanks were taken apart?

A. I think that is right, yes.

Q. Do I understand that the seams of the tanks were reriveted?

A. I think they were all welded. They had a peculiar bottom.

Q. In what way was the bottom peculiar?

A. It was inverted.

Q. How did they cut these rivets that had been in there to get them apart to get inside of the tanks; how did they do that?

A. I don't know that, sir.

Q. Did you see these tanks when they were apart?

A. I think I saw two of them with the bottoms out.

Q. When they were put back together do you know whether they were riveted or not?

A. I am quite sure that they were all welded.

Q. Well, Mr. Simon, do you mean that they were riveted and welded or just welded?

A. They would naturally be riveted, I suppose; I don't recall; I know that they were welded around the bottom of each.

Q. How do you know that?

A. I saw them.

Q. Did you see them actually being welded?

A. No, not that I recall.

Q. Now do I understand you to say that when you saw these tanks you examined the bottom seam and that that bottom seam was welded?

A. That is my recollection, yes.

Q. Now then are you sure of that?

A. As sure as you can be of anything in that length of time.

The Court:

I think this is a good stopping point.

Mr. Matteson:

I would like to ask a question or two at this time.

The Court:

All right.

By Mr. Matteson:

Q. Mr. Simon, I just want to call your attention to the fact that these bills are made up day by day showing labor charges and material charges on each date. Wherever there is a labor charge, opposite the statement of the charge there is a statement of the particular work that that job of labor was used on that day; do you see what I am calling your attention to?

A. Yes, I do.

Q. I think you will find, as you go through these, that that is true all the way through. Now I would like you, if you will, to go through these bills and pick out the labor items that you say refer in any way to the gasoline tanks in the Seminole, that refer to the trays underneath them; that refer to the removal of the tanks or any part of the bulkhead or the tank compartments, and that in any way relates to welding, either of the tanks or elsewhere, on the vessel. Will you be kind enough to go through these documents that were produced, and in the morning be prepared to call our attention to the items that you say represent repairs of that type.

A. I will be glad to do anything I can, but, as I said before, I don't think you can identify them; I doubt very much that you can.

Q. I am calling them to your attention, and if you come back tomorrow morning and say you can't do it, we will do it ourselves from the documents, but I want to give you the opportunity to do it.

A. All right.

(Thereupn an adjournment was taken to 9:30 o'clock a. m., May 18, 1939—the next day.)

Thursday, May 18, 1939, 9:35 o'clock a. m.

(Hearing resumed pursuant to adjournment of previous day; the witness MR. ALLEN SIMMON, resuming the stand upon:

Cross Examination (Continued.)

By Mr. Botts:

Q. Now Mr. Simmon, I want to learn a little bit more about these tanks in that operation. You stated that one of these cross bulkheads, either forward of the tank room, or between the tank room and the engineroom, was removed. Now, which one was it?

A. As I explained that, I didn't know what you referred to as the forward; but it was the bulkhead between the engineroom and the tanks.

Q. All right. That bulkhead was removed?

A. Yes.

Q. Now was this bulkhead removed before the tanks were removed, or after the tanks were removed?

A. I couldn't say; I wasn't there at the time the tanks were taken out.

Q. All right. Well, do you recall at the time when you saw these tanks lying out on the ground, or somewhere beside the boat, do you recall whether that bulkhead,—that engineroom bulkhead, was in place or not?

A. As I recall, it was not in place at that time.

Q. It was not in place at that time. Now then do you recall now seeing the tanks after they had been replaced in the boat,—while they were in place in the boat?

A. Yes.

Q. After they had been taken out and put back?

A. Yes, sir.

Q. Now then was this bulkhead in place at that time, when you saw these tanks after they were put back in?

A. No, I don't believe it was, when I saw it.

Q. In other words, you saw the tanks put back and in place in the tank room, and after that this dividing bulkhead was replaced; is that it?

A. That's my memory, yes.

Q. Now just what portion of the tanks were welded?

A. I couldn't say definitely, but I remember that the bottom was welded; because that was called to my attention particularly.

Q. Was there anything in the physical appearance of it from which you could and did observe the weld?

A. I don't quite understand your question.

Q. If two pieces of metal are welded together, there will be a seam or place showing where the weld occurs, won't there?

A. Yes, sir.

Q. Now then I want to know whether you observed such a welded seam, to use that term, at the point where the weld was made on those tanks.

A. Quite sure that I did.

Q. Well now then do you know that you did?

A. I think so.

Q. Well, is there any doubt about it in your mind?

A. No.

Q. Then you did or did not, now which was it? Did you see that weld?

A. I stated that I saw the weld on the bottom of the tank.

Q. That is what I want to get at, I don't want any thinking about it. Mr. Simmon, I believe that you stated something with reference to the shape of the bottom of the tank. Could you draw on that piece of paper a sketch

illustrating not to scale, of course, but illustrating in a general manner the point that you make; assuming that this tank had been sliced right through down the center of it so as to expose a cross section of it; could you draw a picture of one of those tanks? Make it two or three inches long, and if you want something to use as a ruler, why you can use the side of this pad. (Witness draws.) Now then will you make on that sketch, the words, bottom, and top, indicating? (Witness writes.) Now then will you mark the point where you observed the welded seam? (Witness marks.) All right, will you just draw—suppose you carry that arrow on out here and mark, weld. Now then will you connect that with the welded seam on the opposite side?

A. I already have.

Q. There would be a weld there also, wouldn't there?

A. Yes, sir.

Q. All right, there is the weld.

A. Yes, sir.

Q. Now then I notice that you have indicated the bottom of the tank, the metal, does not seem to come down flush with the bottom of the side; is that based on a definite recollection as to that condition?

A. That's my memory of the condition of the tank.

Q. That the metal from the bottom didn't go quite down as far as the metal from the side?

A. Yes, sir.

Q. So that the weight of the tank then would have to rest entirely on the metal of the side walls?

A. Yes.

Mr. Botts:

I will ask this sketch to be filed as Pilkington's Exhibit 12.

(The said paper was admitted in evidence and marked Pilkington's Exhibit number 12.)

Q. Now then did you personally observe these tanks, or any one of them, while the bottom was out of it?

A. Yes, sir.

Q. Now how many of them did you see with the bottoms out?

A. Two as I recall.

Q. And did you observe any part of the process of taking the bottoms out?

A. No, I didn't.

Q. You don't know how it was done, at all?

A. I haven't any idea.

Q. Now you stated that the tanks were elevated some distance above their original location, when they were replaced; is that right?

A. Yes, sir.

Q. How far was that elevation, to your best judgment?

A. I don't know.

Q. Well now, could you indicate it in feet or half of feet,—that close, do you suppose?

A. I can only say this, that I think they were raised at least two feet, possibly more than that.

Q. Well, then, we would be safe in saying that they were raised at least eighteen inches, wouldn't we?

A. I would think so, yes, sir.

Q. And possibly as much as two and a half to three feet?

A. Possibly.

Q. Now do you know what was done with the old foundation upon which these tanks had previously been resting?

A. No, I do not.

Q. You don't know whether it remained there or was cut out, or what was done with it?

A. I haven't any idea about that.

Q. These port and starboard steel walls—that would, be right and left on the boat—

Mr. Underwood:

Left and right, respectively.

Q. Both of those walls were removed, were they? I am speaking now of the tank room.

A. Of the tank room?

Q. Yes.

A. I don't recall. What I refer to as the inside wall, that is the one that was inside of the boat, I don't recall whether that was removed or not. Certainly the outside wall was.

Q. Well now then, do you know which was the outside wall?

A. I don't mean to say, the outside wall; I mean the wall which the outside of the boat formed.

Q. Which wall of the tank room, if either, was formed by the outside skin or hull of the boat?

A. You mean, as to right and left?

Q. Umh hmh, as you looked forward.

A. I don't remember, frankly.

Q. That blueprint shows that this alleyway was on the right hand side of the boat as you looked forward, and the wall of that alleyway formed one of the walls of the tank room, didn't it?

A. Yes.

Q. And that wall between the alleyway and the tank room, as I understand it, was not removed; is that right?

A. That's it. I didn't recall whether or not it was removed.

Q. It might have been?

A. It might have been.

Q. Now how big was this substantial pile of rust and scale and so forth that you said was pointed out to you as having come out of these tanks?

A. Oh, possibly as big as your hat, maybe.

Q. Well, was it a peck?

A. I am afraid I haven't had enough experience with a peck measurer, to state.

Q. Well, a peck is eight quarts.

A. I wouldn't think so, no.

Q. Were the engines removed?

A. As I recall, they were, yes.

Q. Did you see the engines outside of the boat?

A. I don't recall, Mr. Botts; I am not sure.

Q. Well, then are you certain one way or the other as to whether the engines were removed?

A. No, I am not sure.

Q. Now when the tanks were cut open and rust cleaned out, then the old bottoms were put back in the tanks?

A. It is my belief that they were.

Q. And do you know, when they were put back, whether the tanks were riveted together and then welded, or just welded?

A. As I recall there were rivets driven through both of the sections,—that is the side sections and the bottom section, and then the welded seam was made, as I have shown you on the sketch.

Q. And the rivets weren't welded?

A. No, as far as I know.

Q. I beg pardon?

A. I say, not so far as I know.

Q. Well, you saw this other welding; if the rivets had been welded, you would have seen it, all right, wouldn't you?

A. I expect so.

Q. So the rivets were not welded, were they? What was your answer?

A. I say, I think we can take it for granted that they weren't.

Q. I don't want to take anything for granted, I want to know. Now were the rivets welded or were they not?

A. If they were I didn't know anything about it, I didn't see any evidence of it.

Q. Were the tops taken off of these tanks?

A. Not that I know of.

Q. You saw the bottoms taken out, but you did not see the tops off?

A. That's right.

Q. So far as you know the tops were not removed?

A. That is correct.

Q. The side seam, that would be the vertical seam in the tank when it was in place, was not taken apart?

A. I didn't see it taken apart.

Q. Do you know whether that seam was welded or not?

A. No, I don't. I don't recall.

Mr. Botts:

That is all I have. Mr. Matteson is going to examine on those records, so I won't go into that.

By Mr. Matteson:

Q. Before I do that, I would like to ask you about these pictures; for instance this picture, Libelants' Exhibit 3: Do you recognize the bottom of the tank that shows through the hole?

A. Yes, sir.

Q. As—in that picture; and the rivets show there too, do they not?

A. Yes.

Q. And there is no evidence of any welding on the rivets; is there?

Mr. Underwood:

I object to that; the question is asking the witness to interpret the picture.

(Argument by counsel.)

The Court:

I will overrule the objection. Mr. Witness, you can use the picture as helping to refresh your recollection, not to interpret the picture.—He can utilize that for any questions that Mr. Matteson asks him, to refresh his memory as to what he is asked about.

Q. I will put it this way: Looking at the picture, and seeing the appearance of the rivets there, does that fix it in your mind that the rivets were not welded? Does that help you to do that?

A. Well, I don't recall that the question of the rivets being welded, was raised at all. As I said, I don't remember that the rivets were welded at all.

Q. Now this welded seam that you speak of would be completely out of sight in this picture, would it not?

A. Yes, sir.

Q. No possibility of seeing that?

A. That is right.

Q. It would be above the lower edge of the tank, as it shows in the picture?

A. It should be concealed behind this edge here.

Q. Do you know anything about the technical side of riveting?

A. No, I am not a boiler maker.

Q. Do you know how near to the edge of a plate it is proper, under boiler making practice, to place a rivet?

A. No, sir, I do not.

Q. Well, on this diagram you have shown us that the inverted bottom side of the tank is some distance above the lower edge of the tank.

A. Well, that drawing of course is not to scale; that was merely a slight offset. I perhaps exaggerated that.

Q. Well, how far above the bottom edge of the tank would you say the cap or the bottom of the tank, came?

A. You mean, this edge here?

Q. Yes, the inverted bottom, how far above the bottom edge of the outside tank would that be?

A. Oh, I wouldn't think it was any more than the thickness of the metal itself.

Q. What was the thickness of the metal of the tanks?

A. I don't recall.

Q. Wasn't the plating of the tanks, quarter inch plating?

A. You mean, the material, quarter inch?

Q. Quarter inch or five-eighths; do you know what thickness it was?

A. No.

Q. From your recollection of it, can you tell us how thick the plating of the tank was?

A. No, I don't think I could.

Q. Your recollection is that the distance that the bottom of the tank was above the bottom of the side, was about the equivalent of the thickness of the sheets of the tank, is that right?

A. Yes, sir.

Q. Can you say that the seam around the top of the tank was welded or not?

A. I couldn't say.

Q. Looking at this picture Libelants' Exhibit 6, and refreshing your recollection from that, can you tell us whether the top of the tanks—top seam of the tank was welded?

A. I wouldn't want to pass an opinion from looking at it there, no, sir, just what it would be. I don't recall actually seeing it.

Q. And the side seam of the tank, the vertical seam, can you tell us whether that was welded?

A. No, I cannot. As I stated sometime ago, I don't recall whether it was.

Q. Then the only welded part of this tank that you know of, was this seam on the underside of the bottom, is that right?

A. That's all I remember seeing.

Q. You have had no technical training I think you told us, with respect to matters of this type?

A. No, sir.

Q. Can you describe to us the appearance of this welded seam? How could you tell that it was a welded seam?

A. Well, I have seen a lot of welding before.

Q. Well, tell us, as you looked at this tank, how you were able to determine whether or not it was a welded seam.

Q. Merely because the evidence of the weld, as I recall it, was very apparent.

Q. In view of your lack of training and technical experience you wouldn't be able to tell us whether the tank, —whether the seam had been properly welded or not, I take it?

A. You asked me the question about technical experience, I thought you mean in connection with boats, or with tanks, things like that. But previously I have been familiar with the welding process.

Q. That is in the construction of buildings?

A. No, strictly in foundry work.

Q. And what experience have you had along that line?

A. Practically raised in a foundry.

Q. What kind of a foundry?

A. Malleable iron foundry.

Q. Where was that?

A. In—the location of it?

Q. Yes.

A. East Moline, Illinois.

Q. And when was the last time that you were there?

A. 1923.

Q. And did you work in the mill?

A. Oh yes.

Q. What kind of work did you do?

A. A little bit of everything.

Q. You are an accountant, are you not?

A. Yes.

Q. And is that the kind of work that you did there?

A. No. I was just at school at that time, getting what jobs I could. At foundry during vacation.

Q. Have you ever done any welding on tanks?

A. No, sir.

Q. Did they do any welding on tanks at this factory where you worked?

A. On tanks?

Q. Yes.

A. Not that I recall.

Q. No tank work there?

A. No.

Q. I think you told us before, you don't pretend to be a technical expert with respect to welding of this kind?

A. No.

Q. Were the rivets that had been in the tank, burned out, do you know, or how were they taken out?

A. I don't know, I didn't see them taken out at all.

Q. How were the surfaces prepared before the parts were put together again? Have you any idea about that?

A. What surfaces do you mean?

Q. I mean, when the bottom was put back into the tank, do you know—

A. No, I didn't see any of the work done on there.

Q. Didn't see any of the work done?

A. No.

Q. Were the rivets replaced in the same holes where they had been before, do you know?

A. I couldn't say.

Q. You told us yesterday that there had been a certain amount of welding on the plates of the hull. When I read your testimony over I still wasn't clear as to where plates on the hull were welded. Can you tell me that?

A. I don't know that I am very clear, myself.

Q. Some of the plates on the hull were welded?

A. Yes, sir.

Q. Do you know the difference between cutting and welding by burning?

A. Yes, sir.

Q. Do you know the difference in the process?

A. In a general way, I think.

Q. What is it?

A. Cutting is the—just what it implies, cutting of the metal in pieces; and the process of welding is a process of building up with additional metal,—joining the parts.

Q. I take it that you aren't able to explain to us the difference in technique between the two?

A. No, I wouldn't attempt to pass an expert opinion on it.

Q. Well, is cutting sometimes done with an acetylene torch?

A. Yes.

Q. Do you know anything about zinc plates, with respect to the hull of a vessel, such as the Seminole? Did she have any zinc plates, do you know?

A. I don't know.

Q. Do you know what zinc plates are?

A. Yes; I know what they are.

Q. I mean, do you know what they are as applied to the hull of a vessel?

A. No, I don't.

Q. Do you know that zinc plates are frequently applied to the hull of a steel vessel, to reduce electrolysis, to absorb electrolysis?

A. No.

Q. Were any zinc plates put on the hull of the Seminole at the time these repairs were made?

A. I don't know.

Q. You never heard of that method of reducing electrolysis on the hull of a steel vessel?

A. Yes, I have heard of it, but very recently; I know nothing about it at the time.

Q. You don't know anything about it with respect to the Seminole?

A. I beg your pardon?

Q. You don't know anything about it with respect to the Seminole?

A. No, sir.

Q. When did you first hear of zinc plates as attached to the hull of a vessel for that purpose?

A. Last night.

Q. Mr. Underwood, explained it to you?

A. Yes, sir.

Mr. Underwood:

You give me too much credit, Mr. Matteson.

Q. Who did explain it to you?

A. I think this gentleman over here; what is his name.

Mr. Underwood:

Mr. Gibbs or Mr. Meloy.

Q. Now you said that when the repairs to the Seminole were contemplated in 1927, that Captain Nelson got up an estimate, do you recall that?

A. Would you mind stating that again, please, sir?

Q. I understood you to say yesterday that when the repairs to the Seminole in 1927 were contemplated, that Captain Nelson got up an estimate?

A. That is right.

Q. I asked you whether the work had been planned in a general way by him; you said that Captain Nelson presented the original request for the work to be done, and an estimate of what it would cost. That is page 2207. Do you recall that?

A. Yes, sir.

Q. Was that plan and estimate presented in writing?

A. Yes.

Q. Do you know where that writing is now?

A. No, I don't.

Q. Where should it be?

A. I haven't any idea.

Q. Where was it the last time that you saw it?

A. It was in the file at my desk.

Q. And what file was that?

A. I don't know that the file was labeled.

Q. Do you have a file relating to the Seminole?

A. Well, I would think that it was filed among other papers.

Q. And when you left that office what became of that file?

A. It was left there, so far as I know.

Q. Part of the files of that office?

A. Not a part of the regular filing system, no.

Q. Well, was it turned over to somebody?

A. No, not officially as I recall. It was left there with these other papers.

Q. Did you turn over whatever papers that you had, to the proper custodians when you left that office?

A. That depends on what you mean by turning them over. They were left there, I didn't take any of them with me.

Q. Well, they weren't left to be thrown out, they were left to be taken charge of by the proper party, is that right?

A. I don't know that I at the time thought much about them.

Q. Anyway, you don't know where it is now?

A. No, I haven't any idea.

Q. Isn't it a fact that Captain Nelson estimate for that work was \$7,000.00?

A. Was how much?

Q. \$7,000.00 approximately,—his first estimate?

A. Oh, no; no, as I recall, it was around \$30,000.00.

Q. You are quite sure that that was his estimate, around \$30,000.00?

A. Quite sure.

Q. Where is Captain Nelson now, do you know?

A. I haven't any idea.

Q. As a matter of fact, isn't he Master of a Yacht here in Miami right now?

A. Nelson?

Q. Yes.

A. I didn't know it.

Q. You hadn't heard that?

A. No.

Mr. Underwood:

Is it suggested that he is?

Mr. Matteson:

He was the last time I knew, a couple of months ago.

Mr. Underwood:

When your representative last interviewed him, he was in Miami?

Mr. Matteson:

We interviewed him,—one of our representatives interviewed him, but for their own information. That was about two months ago.

Q. As a matter of fact, Captain Nelson has been in Miami more or less regularly ever since 1928, has he not?

A. I don't know, I haven't seen him.

Q. Were any members of the crew, other than Captain Nelson, on the Seminole during repairs?

A. No, I don't recall that we had any other men on the regular payroll at that time; in fact I am quite sure we didn't.

Q. How long was the Seminole?

A. As I recall she was about 105 feet long.

Q. From what records was this statement,—comparative statement of operations, taken, can you tell me?

A. Those were taken from original invoices.

Q. Well, for instance, take the year 1926, from what source was that information taken?

A. Original invoices.

Q. In what files?

A. In the same files that I kept in my personal custody.

Q. That was in the office at 1317 Biscayne Boulevard?

A. That is correct.

Q. They are not records that have been introduced in this case, so far as you know?

A. Some of them are.

Q. 1926?

A. I don't know. No, I guess not.

Q. Now I asked you yesterday if you would take this bill of Merrill-Stevens and go through it and see if you could pick out any items that you would say relate to the gasoline tanks of the Seminole. Have you done that?

A. I have gone through the bills; yes, sir.

Q. Did you find any such items?

A. I found no items that specifically stated they were for gasoline tanks.

Q. It is a fact, is it not, that you verified when you went through, that all of the labor charges are designated as being applied to some particular kind of work?

A. Not all of them, no.

Q. Well, for instance on page—the page that happens to be open, September 26 and 27, 1927, do you find any there not designated?

A. Well, for instance here is, carpenter odds and ends.

Q. Well, I assume that when the item is carpenter, odds and ends we can assume that that does not relate to the tanks of the Seminole?

A. That is right; but what I meant was, that there are items that are not the labor—the labor is not specified as to where it goes. For instance you will find going through here that there are a number of items entitled piping, that is all the explanation that was given; and here is drillers; well in that case it says, drillers and chippers.

Q. Do you find any undesignated item in this bill that you could refer to the work you have told us about on the gasoline tanks of the Seminole?

A. Well, a lot of material items that could apply; that is, oxygen, acetylene.

Q. The oxygen and the acetylene were also used on the bottom of the ship, were they not?

A. Oh, yes.

Q. I am talking about labor charges particularly; because as I take it, on each day you have certain labor charges, certain material charges; the material must have been used by the men whose time is charged. That is right, isn't it?

A. I don't think that you can follow—I mean I don't think that it follows that the material listed here was necessarily used by these people in that particular—

Q. On the particular day?

A. On the particular day, nor on the particular function stated here.

Q. Well, anyway the materials and equipment used on the job would have to be used by someone for whose time a charge was made, would it not?

A. Yes, sir.

Q. So the items of time are the ones that tell us the nature of the work that was done?

A. Well, not accurately at all.

Q. You think not?

A. No, sir, I know it.

Q. Tell me this, Mr. Simmon; in order for these tanks to be opened up, they would have to be freed of gas and tested before the rivets could be burned out, would they not?

A. That's what I understand.

Q. And that is an item for which shipyards make a charge when that work is done, is it not?

A. Well, as I explained before, this work was not done under contract with the shipyard. Captain Nelson had complete charge of the job, he had complete charge of the labor, and he bought the material from the yard. The work was all done under his direction.

Q. Well, I appreciate that, but you don't have any idea that the Merrill-Stevens shipyard did anything that they didn't charge for, have you?

A. Well, what I meant was, that they didn't know what these men were doing, as far as the yard itself was concerned; they were acting under the supervision and direction of Captain Nelson. None of the shipyard men were in charge of the work at all.

Q. Have you ever had any experience with the gas-freeing of tanks?

A. Of what?

Q. Of the gas-freeing of tanks?

A. What do you mean?

Q. I mean, have you in your experience ever come into contact with a situation where the necessity of freeing tanks of gas before working on them, was involved?

A. In this particular case, yes, sir.

Q. Well, I mean in any other case.

A. Well, I know enough about an automobile to know that an empty tank is the most dangerous thing you can have.

Q. Free gasoline vapor anywhere is exceedingly dangerous, isn't it?

A. Yes, sir.

Q. Exceedingly expensive?

A. Yes, sir.

Q. Now I ask you, in going through the bill did you find anywhere a charge for freeing the tanks of gas?

A. No, sir.

Q. Cleaning the tanks?

A. No, sir.

Q. Do you find any charge for testing the tanks for freedom from gas?

A. No; it is like a lot of other items not shown on the bills, because Merrill-Stevens knew nothing about it; but Captain Nelson reported to me what he did about it.

Q. Well, the work of testing the tank for freedom of gas before work is done on it, is a technical matter that is performed by experts, is it not?

Mr. Underwood:

May we have the question specified, what kind of a tank?

Mr. Matteson:

I am talking about a tank that may have volatile gasoline fumes in it.

Mr. Underwood:

Well, I object to the question on the ground it is not sufficiently specific. There are all kinds of tanks,—tanks in tank steamships, and one rule applies to them; there are cylindrical tanks, of this sort, and another rule applies to that tank. * * *

The Court:

Are you talking about this particular tank that he saw there in the Seminole?

Mr. Matteson:

Well, my question was general, if the Court please; and I think it applies to all kinds of tanks, including these.

The Court:

He is not an expert on that, is he?

Mr. Matteson:

Well, I want to find out how much he knows about it.

The Court:

I haven't considered his testimony as being of an expert nature along these lines, so I think that it ought to be confined to just what he saw in these particular tanks.

Mr. Matteson:

Well, if your Honor please, my thought in the matter has been just this: This man has been produced here with the bills from Merrill-Stevens, and they have been offered in evidence in the case, and he has assumed to give testimony with respect to the work that was done there. I am trying to get an explanation if I can of the absence from the bills of the kind of charges that would be required if the work that he says was done, was done. . . .

(The question was read.)

A. I don't know.

Mr. Underwood:

Wait.

By Mr. Matteson:

Q. You don't know anything about that?

A. I don't know anything about testing for gas.

Q. And you have no explanation of why such a charge does not appear in this bill?

A. Oh yes, I can explain that.

Q. You think it may be hidden among the labor charges that are there?

A. That is right.

Q. And if that were true, it would mean that the work of freeing the tank from gas was done, was performed by the ordinary workmen in the yard?

A. And under the supervision of Captain Nelson. In fact he reported to me that that was done.

Mr. Matteson:

I move to strike that out, if your Honor please, as not responsive to the question.

(Argument by counsel.)

The Court:

It is a voluntary statement; I grant the motion to strike.

Q. How recently, Mr. Simmon, were you asked with respect to this work that was done back in 1927 in connection with this case?

A. How recently was I asked what?

Q. How recently were you asked about this work that was done on the Seminole in 1927 in connection with this case?

A. Right now.

Q. I assume that someone of the legal staff of the Respondent talked with you before you came to Court.

A. Yes.

Q. When was it that any of them first talked to you about this work in 1927?

A. I think sometime in March, as I remember it.

Q. March of this year?

A. Yes, sir.

Q. Is that the first time that you had occasion to go back and think about this job since the matter actually took place?

A. No.

Q. What occasions in the meantime have you had to recall these matters to your mind?

A. Well, Mr. Batchelor called on me at one time at St. Augustine and asked me questions about the case.

Q. And at that time you remembered very little about it, is that the fact?

A. About the questions that he asked me, yes; he didn't ask me about the work done on it.

The Court:

A little louder.

Q. You say he didn't ask you about the work that was done on the Seminole?

A. No, sir.

Q. That is, he didn't ask you?

A. That is right.

Q. And there was nothing in connection with that interview that caused you to go back to 1927 and think about this work, was there?

A. No, I don't recall any incident.

Q. So that the first time since 1927 or 1928 that you had occasion to go back and refresh your recollection with respect to this work was in March of this year?

A. That is correct.

Q. Now what have you had to refresh your recollection with respect to that work?

A. Mostly just the bills, invoices and so forth that have been presented here, and the statements.

Q. Just these that have been offered in evidence, is that right?

A. Yes, sir.

Q. Now what is there about this set of bills, Respondents' Exhibit 4-L, that refreshes your mind with respect to the work on the tanks?

A. I don't know of anything in connection with the bills that does.

Q. Now I would like to ask you about the supports on which these tanks were placed in the tank compartment, and I think you said they were raised up about two feet from their former position, is that right?

A. That was my understanding.

Q. So that after this job was done they stood two feet higher in the tank space than before?

A. As I understand. I don't know how much higher, but they were raised.

Q. That is your recollection, approximately?

A. Yes.

Q. What I am asking you about is what supports were put under the tanks for the tanks to rest on?

A. I don't recall definitely but it seems to me that there were steel angle irons and beams under there to support the tanks.

Q. Were those beams fastened to the forward and after bulkheads of the compartment?

A. I couldn't say as to that; I don't know.

Q. How many of these supporting beams were there?

A. I don't know.

Q. You don't know how they were installed or what supported them?

A. No; I don't remember.

Q. I take it, Mr. Simmon, that you are not a technical electrician either?

A. No, sir.

Q. Now, Mr. Simmon, I would like to ask you this: I show you this photograph, Libelants' Exhibit 9; do you remember this opening in the bulkhead here which is indicated in this picture by an arrow with the letter "A" at the end of it?

A. Yes, I think I do.

Q. That has been referred to by the witnesses as the old coal hole through which coal was shoveled when the

tank space was the coal space; do you recall that opening?

A. I recall the opening up there; but I don't recall anybody calling it a coal hole.

Q. Do I understand you to say that this whole bulkhead that shows in this picture, Libelants' Exhibit 9, was renewed in 1927?

A. Which bulkhead?

Q. This bulkhead between the engineroom and the tank compartment?

A. I don't recall that I said it was renewed; I said it was removed.

Q. I thought you said it was renewed?

A. No; I said it was removed.

Q. Was the same bulkhead put back in place?

A. So far as I know; I don't know whether that was removed or new plates put in there or not.

Q. Was it entirely removed?

A. As I recall it it was entirely out of there.

Q. As a matter of fact, you see this plate in the middle which is bolted in place, wasn't that the only plate that was taken out?

A. Not that I recall; the whole thing was off.

Q. And replaced after the tanks were in place, is that your testimony?

A. Yes.

Q. And this plate in which this hole is that I called your attention to appears, the old coal hole, as I call it, is that the same plate that was there before?

A. I couldn't say as to that.

Q. Is the hole identically similar with the one that was there before?

A. It is a hole, and I presume it is the same one; I don't know the same size, shape or anything else.

Q. Your testimony yesterday was, quoting from page 2089,

"Q. Then the steel bulkhead forward of the tank location wasn't taken out at all?

"A. You mean the one between the tanks and the rest of the boat?

"Q. Yes.

"A. No; the one between the tanks and the engineroom was replaced.

"Q. With a new one?

"A. That is right."

Now, which is it. Was a new bulkhead put in or was the old one put back?

A. I don't know whether there was new plates put in there or not. As I understood it, the question was as to whether this was removed or not, and I am sure that it was removed.

Mr. Matteson:

I gather from your testimony here that you volunteered the statement that it was replaced.

Mr. Botts:

No; he was asked if it was replaced with a new one.

A. It was replaced.

Q. You are not sure now whether it was new or old?

A. It was replaced but I don't know whether it was new construction or whether it was the same bulkhead.

Q. Well, if you are not sure how was it that you happened to answer this question:

"Q. With a new one?

"A. That's right."

Were you sure at that time that it was a new one?

A. I couldn't have been, because I don't know whether the material was put back in the bulkhead—whether the

material that was put back in the bulkhead was the same material or not.

Q. At the time you were asked this question: "With a new one", you said, "That is right", without any qualification or indication that you had any doubt in your mind. Was there a doubt in your mind at that time?

A. I couldn't say why I answered it that way; I must have been confused.

Q. When did this doubt first arise in your mind about that point?

A. I wasn't aware of any doubt at all; I am still under the same impression that I was.

Q. Was that a matter that was discussed last night too?

A. This bulkhead?

Q. This testimony that you gave yesterday.

A. Oh, no.

Q. Yesterday you were clear and definite in your mind that it was a new one when you answered the question.

A. I could not have been.

Q. You say now that you could not have been when you answered; is that what I understand?

A. Yes.

Q. Is that true of any other answers that you have given here?

A. I don't know, unless I could go over them.

Mr. Matteson:

I think that is all.

By Mr. Botts:

Q. Mr. Simmon, isn't it possible that you could be just as much mistaken about the welding of these tanks as you were about the newness of that bulkhead?

A. I had no intention of ever making any statement regarding the newness of the bulkhead, and I have no recollection of that question coming up before.

Q. Do you deny that you made the statement?

A. No, I can't deny it.

Q. Now then after these tanks were removed from the hull and opened and then riveted together again and welded, do you know whether or not they made any test of these tanks; I mean do you know of your own knowledge?

A. Yes; Captain Nelson reported the test to me.

Q. I am asking you what you know.

A. I wasn't present, if that is what you wish me to say.

Q. Mr. Simmon, when I ask you a question I want to know what you know and not what someone might have told you.

A. All right.

Q. Now then I wonder if you would mind telling me how it happened that you were informed last night about this process of putting zinc plates in the hull of a steel ship; how did that arise?

A. There was some discussion; I don't recall just exactly how the matter did come up; I know there was some discussion, but I don't know that I was a party to the original discussion.

Q. I wonder if maybe I could suggest something—

Mr. Underwood:

If your Honor please, I don't think the witness was permitted to finish his answer, although I may be mistaken.

The Court:

Did you finish your answer?

The Witness:

In the course of the conversation Mr. Monroe said something about the necessity for zinc plates on the hull. I don't recall who asked the question about it.

(By Mr. Botts):

Q. Or why it came up?

A. No, sir.

Q. I am wondering, Mr. Simmon, if this could have been the way that it arose: that you were asked to point out in these bills some charge for zinc material for making these pans and you pointed to these various charges for zinc plates in here, and they said, "no; that was something else". Is that the way it came about?

A. I think Mr. Monroe was going through the bills and I don't believe I was a party to the discussion. As I recall it, there was somebody else asking about the zinc plates.

Q. You were not trying to show him where the zinc from which these pans were made were charged in these bills?

A. I don't think I was a party to it at all.

Q. Now is there anywhere in those bills a charge for any sheet zinc for the making of those pans?

A. As far as I am concerned, I was under the impression that these zinc plates answered that purpose.

Q. That is what I thought.

A. Yes.

Q. And seeing those zinc plates in there is what suggested the thought that these pans were made of zinc, is that right?

A. Yes.

Q. And without that suggestion in there you would not have been able to identify the material for these pans, would you?

A. Now, don't misunderstand me. I thought that the pans—my recollection of them was that they were made of zinc even before I examined those bills, and I just took them as verification of my impression.

Q. You know now that there is no sheet zinc charged in those bills, don't you?

A. There is zinc plates in there.

Q. I said sheet zinc out of which the pans could have been made.

A. As far as I am concerned I wouldn't know the difference between sheet zinc and zinc plates.

Q. That is not the question I asked you. You may not be trying to dodge it, but it sounds like you are. You know now that in those bills there is not one single item for sheet zinc, don't you?

A. No, I can't say that because as far as I know zinc plates and sheet zinc are the same thing; I don't know that there is any difference.

Q. Your technical advisor did not tell you the difference between zinc plates and sheet zinc?

A. I have no technical advisor.

Q. The technical expert that told you about zinc plates last night didn't tell you that difference, did he?

A. No.

Q. There is no charge in these bills for sheet zinc, is there?

Mr. Underwood:

I object to that; he has covered it many times and the bills speak for themselves.

The Court:

He says he doesn't know the difference. Suppose you specify an item—

Q. There are numerous charges in these bills for zinc plates?

A. Only one that I know of.

Q. I have seen at least two, and I haven't gone through the pile.

A. At least one in a large amount.

Q. Charges in there for zinc plates, at any rate, whether one or more?

A. Yes.

Q. You don't know of any charge in these bills for any other kind of zinc except zinc plates, do you?

A. No.

Q. Now do you think it is possible that you could have been mistaken yesterday when you said these pans were made of zinc?

A. I can only state what I said yesterday, that I believed they were made of zinc.

Q. You were quite positive of it yesterday.

A. I said so.

Q. You have said that the charge was in there for the material, didn't you?

A. I suppose I did; I don't know.

Q. Did you, as requested by Mr. Matteson, very carefully go through these bills last night to try to identify any charges with reference to the work in respect of these tanks; did you look for them?

A. Specific charges?

Q. Yes.

A. Yes.

Q. Then you know that there is not a single charge in these bills, or any one of them, for removal of the tanks?

A. No. I think the charges are there; they are not so specified, but they are there.

Q. There are no charges in there which can be identified as being charges for removal of the tanks?

A. None which is identified in these bills.

Q. And there is no work so identified on them that would in any indicate that it was for removal of the bottoms of the tanks, is there?

A. There is no item in there that states it that way.

Q. There is no item in there for riveting the tanks, is there?

A. I don't recall as to that; I don't know whether there are any general items in there; there is nothing in there that states "riveting of tanks".

Q. And there is no charge in there for welding tanks?

A. No, not under that title.

Q. And there is no charge in there for replacing the tanks in the ship?

A. It is not so stated.

Q. And there is no charge in there for making pans, of zinc or otherwise, is there?

A. It is not so stated.

Q. Do you know who it was that determined these tanks, after being in use about five years, were required to be removed, opened and reassembled; do you know who determined that that was necessary?

A. Captain Nelson.

Q. Now I think we are clear, Mr. Simmon, that there is not one single reference to these tanks, as such, in any of these bills, is that right?

A. Yes; I think that is right.

Q. Then a reference to these bills would not in anywise serve to refresh your memory as to any work with respect to these tanks, would it?

A. No, I don't think it would.

Q. Then, as far as the work on the tanks was concerned, you are depending entirely upon your memory of a transaction that occurred some eleven years ago; right?

A. About ten or eleven years ago.

Q. Now, Mr. Simmon, there were many, many different items of repair—items of repair performed in connection with this rehabilitation of the Seminole?

A. Yes, sir.

Q. Can you enlighten me at all on the subject of what it was with reference to these tanks which, after eleven years, that leaves still fresh in your memory the thought or belief that the metal of the bottoms of these tanks did not come down flush with the metal of the sides?

A. Yes, I can.

Q. All right.

A. There was a discussion; in the first place, Captain Nelson didn't know whether we would be able to use these tanks, or whether we should get new tanks, and that was one part of the estimate on the work which was left open for determination. The tanks were removed, and I was very much interested, because of the buying angle, as to whether or not we would have to order new tanks or not, so I went out there to see about it, and, as I recall it, he called me up when he was ready to show me the tanks. He had two of them opened, and he decided, and I concurred in his opinion, that the tanks were in good shape and as good as any new tanks we could get, and he said, "well, we will put them back together", and the next time I saw them they were ready to go back in the boat, and he told me about all the tests that he performed on them, and the test seemed as rigid as, one could desire; so, after having tested these we decided not to purchase any new tanks. I recall that there was a question in my mind (as I admitted before)—I didn't know anything about tanks—there was a question in my mind, as to whether or not he could take the bottoms out of these tanks and put them in and have them as good as ever, and he said that he could. He said that he would weld around there to make sure that they were as good as ever.

Q. And that refreshes your recollection that there was a little difference in the elevation of the bottom in relation to the sides, and you remember that clearly after all of these years?

A. Yes, I do.

Q. Now when you saw these tanks in position in the ship before that engineroom tank compartment bulkhead was replaced, the pans were then underneath the tanks, is that correct?

A. As far as I recall, yes.

Q. They could not put the pans under there after they put the tanks in, could they?

A. I don't know; they might have.

Q. You have stated that you think there are labor items on these bills which are not definitely identified as being with respect to anything else and which might have covered these items of removal, opening, welding, replacing the tanks and making the pans. I am going to ask you if you will take those bills and show me a single one of the character you have mentioned.

A. You mean limit it to one single item?

Q. One or more items, I will put it, which might have been with respect to the tanks.

A. The labor is all charged, or the greater portion of it, into the "bottom", and I think that the labor charges on these items were included in this charge.

Q. Show me one labor charge that could be so categorized, will you please?

A. It might have happened in one of these items (pointing).

Q. What is it?

A. Boilermakers; bottom plates; boilermakers' helpers.

Q. Are these the items that you say—

A. I say there are items like that practically every day all the way through here.

Q. I want you to point me out one.

A. Here is another and here is another.

Q. Boilermakers, plates, bottoms and sides might have been?

A. Yes.

Q. Down here is another one.

A. Yes.

Q. That refers to "bottom" and "sides" of the ship?

A. That is what it says here.

Q. I am asking you to point out one item of labor that might have been with reference to tanks; I am not interested in the sides of the ship. I can read myself.

Mr. Underwood:

I think that Mr. Botts should not be so sharp with the witness. The witness has said that the items that he pointed to might have been with reference to the tanks.

Mr. Botts:

He may have answered it to your satisfaction but he has not answered it to mine.

Q. Now, Mr. Simmon, I am not interested in the items that show "boilermakers, bottom and sides"; I can read those myself. I want you to show me one item of labor, one or more, that might have been with reference to removal of tanks, opening tanks, welding tanks, riveting tanks, replacing tanks and making pans. I want you to show me one item of labor of that kind, if you will.

A. There is no item in there which states that that is specifically what it is; for anyone of those operations.

Q. You have told me that many times, and you have told us that there are labor items that might have been, these unidentified labor items, that might have been for this purpose; they are the ones that I want you to point out, if you can. If you can't do it right now, suppose you take these and I will give you the rest of the day to find them. You can even take your experts to help you, if you want to.

Mr. Botts:

If the Court please, instead of taking up the time of the Court for him to do that, I am through with the witness until he advises me as to these items. I am going to ask him that he take these and take all the time he wants to and look for the items such as I have asked him about. Then we will know whether he can do it or not. Maybe we can go on with something else in the meantime.

The Court:

Do you wish to do that, Mr. Simmon; would you like to take them until this afternoon?

The Witness:

Your Honor, I don't believe they would help materially in any way.

Mr. Botts:

It would help me—

The Witness:

I have—I can explain why these items were not shown individually, and when I offered the explanation it has not been accepted, so my hands are tied.

(By Mr. Botts):

Q. When you get down to it, Mr. Simmon, your only explanation is that there is no such items there, isn't that right?

A. No, sir.

Q. You can't find them.

A. It is not specified as such, and I have stated that before.

Q. I have relieved you of that responsibility, and I will ask you if you can locate any unspecified and unidentified labor that might conceivably have been with reference to removing, reconditioning, re-welding and replacing these tanks.

A. The explanation that I gave sometime ago was that Merrill-Stevens made these charges, and they had no knowledge of the work that was going on, and practically all of this labor was charged into "bottom and sides", whereas, as a matter of fact, it wasn't all "bottom" and "sides".

Q. Then your answer is that the bill is wrong, is that correct?

A. That is correct.

Q. I think you said that the Captain of the ship was the man that superintended this?

A. He did.

Q. Did he give the charges to Merrill-Stevens or did Merrill-Stevens give the charges to him?

A. Merrill-Stevens had their record of the employees; they punched in on Merrill-Stevens' timeclock, punched in and out, and these bills were made up from their records there. Now, as to charging it to the different operations, they had no record of what the different operations were. That was up to Captain Nelson, and he made his report to me as to what the work was, as to what work was being done.

Q. Do you have any of those reports or were those verbal?

A. Mostly verbal.

Q. When was it, Mr. Simmon, that you, if you have been, were made aware that the reconditioning operation with respect to these tanks was important?

A. I don't recall; I wasn't consulted about the necessity for reconditioning, but I was told that the operation was going to be performed.

Q. That is not the question I asked you. I asked you when, after the present case was in progress was it that you were first made aware that, if you have been at all, it was deemed important to show that these gasoline tanks were removed and reconditioned.

A. Nobody ever told me that.

Q. Nobody ever suggested that to you?

A. No.

Q. That is all, unless you want to point out these items of unidentified labor—

The Court:

He says he doesn't care to do that.

Mr. Botts:

All right; then I am through.

The Court:

You heard what he said, and I take it for granted that he means that he doesn't desire to come back as a witness.

Mr. Botts:

Yes, I heard him. That is all.

(By Mr. Matteson):

Q. Do I understand you to say that Merrill-Stevens had no foreman on the job?

A. That is right.

Q. They kept no track of what work was done on the job?

A. No, sir.

Q. How do you know that?

A. It is a matter of knowledge; that's all.

Q. You mean that somebody told you that?

A. No; I know they didn't have any foreman on the job; that wasn't the arrangement with them at all.

Q. You didn't work at Merrill-Stevens?

A. No.

Q. You didn't keep their records?

A. No.

Q. You don't know what the source of their records might have been, do you?

A. No.

Q. You are just guessing at it?

A. Except that I questioned them on some of these bills and they had no record of what work was being done except their timeclock records.

Q. So all you know is something that they told you about that?

A. Yes.

Q. Doesn't it strike you as rather extraordinary that they didn't know anything about what their men were doing?

A. Beg pardon.

Q. Doesn't it strike you as rather extraordinary, Mr. Simmon, that they didn't know anything about what their men were doing?

A. Well, the men were working under Captain Nelson, and he was supposed to keep track of them and see that they were working.

Q. And he was supposed to tell each individual man what he was to do at any particular time; is that your understanding of it?

A. Yes.

Q. And that is based on what Merrill-Stevens told you when you inquired about the bill afterwards?

A. What?

Q. That is based on what someone at Merrill-Stevens told you when you inquired about the bill afterwards?

A. Yes.

Q. It is a fact, is it not, that the reason for those inquiries was that you suspected that the bill was much too high?

A. No, that wasn't the reason at all. The bills came through from time to time during the progress of the work, and I knew from Captain Nelson's reports that certain operations were going on, and the bills were coming in for the same "old operations", and I called them up about it, and that is when I found out that they had no record, only as to the work being done—they just charged these men "in".

Q. There was at one time, when you made inquiries of Merrill-Stevens a suspicion on your part that some of the work indicated on the bill had not been done; is that the fact?

A. No.

Q. Do you recall going to Merrill-Stevens in company with Mr. Brown to make inquiries on this point?

A. Not at this time.

Q. At any time.

A. That was six months, I guess, after this work was done.

Q. And that was the purpose of that inquiry at that time?

A. No, not to find out whether the work was done; there was no doubt about the work being done.

Q. You had no doubt about that in your mind at all?

A. No.

Q. You knew at that time, didn't you, that you had already discovered that Captain Nelson had receipted for gas on one or more occasions, for 200 gallons more of gas than he actually received, did you not?

A. I don't recall that, but I knew that he accepted some commissions on sales.

Q. Did you have charge of investigating the conduct of Captain Nelson?

A. I wouldn't say that I had charge of it, no.

Q. You had a good deal to do with it?

A. I helped to a certain extent.

Q. You had at least heard at that time that he had receipted for more gas on occasions than he had received?

A. It is possible, but I don't remember that particular incident now.

Q. You had no suspicion when you inquired about this bill that some of the work represented by the bill had not been done?

A. No; there was no question at that time of that kind.

Mr. Matteson:

"That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What was the questioning about Captain Nelson at that time; at the time you went to Merrill-Stevens with Brown to make inquiries about this work, what was the point of your questioning at that time?

A. The point was to find out whether he had accepted any commissions on the work done.

Q. During the progress of this work how often would you be at the yard and see it?

A. There was no regularity but, as I recall it, I was there several times a week.

Q. Who checked over these bills as they came in?

A. I did.

Q. When they came in just how did you check them over?

A. I had written memorandums and reports from Captain Nelson as to the progress and nature of the work being done, and also a rough idea in general of the number of men being employed daily.

Q. Were they checked in any way against your own observation?

A. Naturally.

Q. How at that time did the bills compare as to the nature of the charge with what you yourself had observed the men doing?

A. Well, the bills, as I said before, did not agree in all cases because there was no accurate payroll record kept by Merrill-Stevens so that the charge could be put on the bill; I knew what the operations were from the memorandums.

Q. Mr. Matteson indicated while he was cross examining you that he wanted an explanation of why the work of gas-freeing tanks does not appear on the bills. Do you have any explanation of that?

A. Yes, it is the same explanation that this work was all done, and a large body of men were working on the boats; I think at times there was as high as 45 to 50 men employed on the boat, and Captain Nelson was acting in direct charge of these men, directing each just what to do, and even he did not go into detail as to every operation performed by each man, because there was no purpose of it; the main item was to see that we paid for the men employed there and the time they worked, and that the work was all done on the boat, and the fact is that it was one large operation of labor on the boat, and there was no real reason for breaking it down to a very fine cost accounting basis for each operation.

Q. You were asked about whether Captain Nelson's original estimate was in writing. I would like you to tell me what you have done, if anything, in an attempt to locate that?

A. I was at the offices at 1317 Biscayne Boulevard and went through every bunch of files I could find there, trying to locate the memorandums and the estimate.

Q. When did you do that?

A. It was about one month ago, or six weeks ago.

Q. During the progress of this trial last March?

A. Yes.

Q. Do you remember how late you stayed up that night trying to find it?

A. About midnight.

Q. Were you able to find it?

A. No, sir.

Q. Generally, to refresh your recollection as to these repairs that were done, what have you looked at?

A. I have looked at these statements and invoices; that is about all.

Q. Do you remember anything else?

A. I don't recall anything else.

Q. By the way, have you any connection now with Mr. J. S. Phipps or any member of the Phipps' family or any corporations in which they are interested?

A. None whatever.

Q. Mr. Matteson just asked you some questions about inquiries that you made at Merrill-Stevens at the time that the work was being done, as I understand his question: do you recall any inquiries during the course of the work while you were receiving bills for it?

A. Yes, sir.

Q. On what did you base that?

A. You mean the inquiries as to the charges?

Q. Yes; on what did you base your approval or amendment of the bills during the progress of the work?

A. I had a record of the rates being paid to the different classes of labor, and of course the extensions were checked on each daily; then I had a record or reports from Captain Nelson or memorandums as to the nature of the work being done, and I checked on them physically to an extent when I went out there, and it was based upon that knowledge that the bills were okayed, relying, of course, to a great extent, upon Captain Nelson's reports.

Q. I call your attention to a portion of one of Merrill-Stevens bills which ends up with items for September 17, 1927, and I call your attention particularly to the pencil marks and calculations below the typewriting. Will you tell me whether or not you made those?

A. No.

Q. Who did that?

A. Mr. Wilson.

Q. Do you remember whether or not that was done at your direction?

A. Yes, it was.

Q. Does that bear your okay?

A. Yes, sir.

Q. You spoke to me last night about a mistake you made in your testimony yesterday. Will you tell me what that was?

A. In reply to a question asking if this last was in my handwriting and I said it was inadvertently; I had no intention of stating that, because it is not.

Q. Do you recognize the handwriting now?

A. Yes.

Q. Whose is it?

A. Mr. Wilson's.

Q. Referring to the yellow sheet which is the first page of Respondents' Exhibit 4-L?

A. Yes.

Q. Will you tell me whether or not that was prepared at your direction?

A. It was.

Q. You have said something about your experience with welding, and I don't think it is clear just how or just what you have done in that connection. Will you tell me about that?

A. I worked in a malleable iron foundry and in many cases it is necessary to correct sand blows and cracks and other faults in castings by welding, to fill up the holes, and that was the extent of my experience with welding.

Q. What did you yourself do about that?

A. About the welding process?

Q. Yes.

A. Nothing individually.

Q. Did you ever do the welding yourself?

A. No.

Q. Did you see it done?

A. I was in charge of the department where it was done.

Q. Do you know what welding looks like?

A. Yes.

Q. When you saw these two gasoline tanks from which the bottoms had been removed, I wish you would describe to me what the inside of the tanks looked like at that time.

A. Well, as well as I recall, it was just bare metal, rather bright and apparently smooth; there wasn't any particular distinguishing characteristics about it.

Q. You say it was fairly smooth. Can you tell me whether or not it showed any signs of pitting or corrosion?

A. No, I don't mean that it was finely polished, a finely polished piece of metal, but, as I recall it, it was not pitted or corroded.

Q. How about the inside of the bottoms of the tanks at that time; how did they look?

A. They looked clean.

Q. How did they compare with the sides of the tanks themselves?

A. I would say they were in about the same condition.

Q. I would like for you to describe for me a little more the nature of this pile of materials that had been removed from the tanks, and which you said was about as big as a hat.

A. It was about the size of a hat.

Q. What kind of material was it?

A. The only way I can describe it is just to say dirt.

Q. What was the texture; what did the individual pieces feel like?

A. I don't believe I examined it; I didn't put it in my hand or anything like that; I just saw it there on the ground.

Q. Did it look like corn-flakes or sand or just plain dirt?

A. No, it looked more like a sort of mud; you might say that it looked like a sort of mud that dried or something.

Q. Looked like dry mud?

A. Not dried hard; it was a little watery; it seemed to have fairly good substance; it wasn't necessarily loose.

Q. What is your recollection of it as to color?

A. I don't recall any distinguishing color in it at all.

Q. Do you know the color of rust?

A. Yes.

Q. How did the color of that compare with the color of rust?

A. I don't recall seeing any rust color there at all.

Q. Do you know what scale from the inside of a tank looks like?

A. Well, I have an idea; I don't know that I am an expert on it, however.

Q. Well, what is your idea of the way scale from the inside of a tank looks like?

A. I would think it would come out like scale off of any object that rusts; sort of flakes or sharp pieces.

Q. Did you observe any of that in this pile of dirt?

A. I don't recall seeing any; no, sir.

Q. Now during the progress of this work just what was the relation between yourself and Captain Nelson?

A. Well, Captain Nelson had charge of the work, and I had no direct authority over Captain Nelson.

Q. To whom did he report as to the progress of the work and the amount of the charges?

A. He reported to me but not as the person in authority, but as a person who was doing the accounting and keeping the records of what was done.

Q. Will you tell me whether or not he did report to you as to the progress and the nature of the work?

A. Yes, sir.

Q. Will you tell me whether or not that was in the ordinary course of business at that time?

A. Yes, it was.

Q. What did he report to you as to the method in which the tanks were tested?

Mr. Botts:

Hold it. If the Court please, that is calling for hearsay testimony and I object to it, what Captain Nelson reported to him.

Mr. Matteson:

I join in the objection.

The Court:

Technically I think it is a good objection, but we have had no objections—

Mr. Botts:

We have had some, and we have let them get away with a good deal, but I insist on this objection; in other words, I am not objecting to leading questions and things like that, where it is merely to save time, and I have failed to interpose technical objections many times, but this is a question that I think borders on dangerous testimony which we might not have any possibility of controverting.

(Legal argument.)

The Court:

I will sustain the objection.

Mr. Underwood:

I want to ask the same kind of question with reference to another matter.

(By Mr. Underwood):

Q. Will you tell us, Mr. Simmon, whether or not Captain Nelson made any report to you as to the method of preparing the tanks before they were taken apart?

Mr. Matteson:

If your Honor please, I certainly object to that; this is obviously an attempt to get in Captain Nelson's testimony without calling him.

Mr. Underwood:

It is an attempt to get into the record reports made by a subordinate to a superior official and reports made in the ordinary course of business at the time.

The Court:

I think the objection is well taken. I will sustain the objection.

Mr. Underwood:

If your Honor please, there is another basis for that question; Mr. Matteson asked this witness if he had any experience about tanks and the freeing of gas, so he opened the door on this.

The Court:

You can let him answer the question for the record, if you want to. We do not have a jury here.

Mr. Underwood:

I will appreciate the opportunity to do that, if your Honor please, as to this question and as to the preceding question.

The Court:

You may do it.

Mr. Underwood:

May we have the Reporter read the question first, and then the preceding question?

Mr. Botts:

I understand the ruling is that at present it is inadmissible.

The Court:

That is correct.

(Thereupon the question was read as follows: "What did he report to you as to the method in which the tanks were tested"?)

(By Mr. Underwood):

Q. You can answer that.

A. Do you mean before they were taken apart?

Q. No; after they were put together again.

A. Captain Nelson reported to me that they were tested under high air pressure under water for any leaks, any air leaks, and he felt confident that if they didn't show any aid leaks under water under high pressure, they certainly would not leak any gasoline out of the tank.

Mr. Underwood:

Now, Mr. Colman, read also the preceding question to which the objection was sustained.

(Thereupon the question was read as follows: "Will you tell us, Mr. Simmon, whether or not Captain Nelson made any report to you as to the method of preparing the tanks before they were taken apart"?)

A. He told me that the tanks were filled with water and would eliminate any danger of explosion.

The Court:

Now your objection is to that?

Mr. Botts:

Yes, your Honor.

The Court:

The same ruling; I will sustain the objection.

Q. Mr. Simmon, as to these two drain pans, what was their color when you saw them?

A. What?

Q. I will put it this way: Do you remember how many times you saw those pans during the progress of this work?

A. Only once that I recall.

Q. What was their color at that time?

A. I don't know; they were all painted over in red paint.

Q. Yesterday you were asked a question as to the covering, if any, on the bulkhead which separated the engineroom and the alleyway; do you remember that?

A. I was asked a question as to what I thought the wall was, as to what it was made of between the engineroom and the—

Q. What was the wall made of?

A. Steel.

Q. Was it, according to your recollection, covered with anything on the engineroom side?

A. No.

Q. Was it, according to your recollection, covered with anything on the alleyway side?

A. I don't know about that.

Q. Now you said yesterday something about Mr. John S. Phipps being the owner of the Seminole at the time this work was done. I would like to know the basis for that statement: on what do you base that statement?

A. Why, I saw the form that was filed; in fact, I filed the form in the customs house here registering the boat here in the port of Miami, and it was put in in the name of the owner.

Q. Will you tell me whether or not that is the sole basis of your statement that Mr. John S. Phipps was the owner of that boat?

A. Yes, sir; that is the only knowledge I had.

Q. It is not quite clear to me Mr. Simmon, the difference between 4-N and Exhibit 4-O; I think you said one was a statement of expenditures, and that the other was a statement of operating expenses.

A. That is right.

Q. Will you distinguish these two phrases for me and tell me which one is which, please.

A. Yes. This one, which bears number 4-N is a statement of all expenditures; that means of money expended regardless of the purpose for which it was expended.

Q. Now what is the difference between an expenditure and an operating expense?

A. Well, they may be the same thing and they may not.

Q. When they are not the same, what is the difference?

A. "Expenditure" is a more inclusive term than this; it is a statement of the cash outlay during a certain period of time, regardless of when the bills may be incurred. A statement of operating cost allocates these charges to the period of time to which they are chargeable and against each—

Q. Maybe I am wrong, but as I understand it, expenditures include all cash outlay of every nature.

A. Yes.

Q. And the operating expenses distinguishes expenditures for operation—

A. It includes expenditures for capital charges.

Q. Now as to Exhibit 4-O you said something yesterday about it being a comparison between the operations under Captain Baker and operations of the Seminole Boat Company. Will you show me how they compare—perhaps, I can shorten it by asking you what the last column on the top page of 4-O includes.

A. The last column is supported by this schedule here; it is a statement of operations during the agreement with Captain Baker from October 31, 1929 to July 1, 1930.

Q. Do the prior columns, beginning with 1926 and going to 1929, include operations under Captain Baker?

A. Only for the portion of this period and a portion of this. You see, this statement here is from October 31, 1929 to July 1, 1930, and this column here is for six months.

Q. Indicating the 1930 column?

A. Yes. So that a portion of that amount shown in this column—

Q. 1929 column?

A. Yes. And all of this —

Q. Indicating 1930?

A. Yes; in this operating statement here.

Mr. Underwood:

That is all.

The Court:

I suggest that one of you ask the witness what was involved, or what was incorporated in that \$50 a day charge,—lay-day.

Mr. Underwood:

I think we can agree that is a charge for the use of the Marine Whaleyway or the ways per day.

Mr. Matteson:

Yes, that is right.

Re-Cross Examination.

By Mr. Botts:

Q. How did it happen that your attention was called to this pile of stuff that came out of the tanks?

A. Well, as I explained before, the discussion of tanks was quite material, as to whether we would buy new tanks or not; and anything pertinent thereto was a matter of great interest at the time.

Q. And after they had been opened up, than your attention was called to this pile of stuff that was removed from the tanks?

A. That is right.

Q. And there had only two tanks been opened at that time, when this pile of stuff was exhibited to you, is that right?

A. Yes, sir.

Q. And you say there was no scale or rust in this pile?

A. Well, I said that I didn't see anything of the ordinary color of rust, no; looked like what I thought scale looked like.

Q. You mean you did not see anything in the nature of scale, is that it?

A. That's right.

Q. When you saw this pile, only two of the tanks had then been opened, is that right?

A. Yes, sir, I believe that is right.

Q. And you found those tanks in practically perfect condition inside?

A. Yes.

Q. And after finding these two tanks in perfect condition, then you still went on to the trouble and expense of opening up the other two, to find them also in perfect condition, right?

A. Yes, sir, that's my understanding of it. I didn't see it done.

Q. Now what color was this stuff that came out of the tanks?

A. I don't know how to describe the color of it; just a mass of stuff there. I don't recall that it had any color at all.

Q. What was the particular importance of this, that they would collect it together into a pile, or what you described as a mass? Wouldn't the normal thing have been to scrape it out on the ground and let it scatter where it would, instead of collecting it into a mass or pile?

A. Well, they couldn't very well scrape it out on the ground, because this was right alongside the boat where they were doing all the work.

Q. Well, was it on the dock, or what was it on?

A. I don't know; as I recall it, some sort of a platform there, the men were working on.

Q. Well, there wasn't any particular occasion for scraping it up or collecting it in a pile, was there?

A. No. I think it was just where they had knocked it out. I just happened to be there before they disposed of it, probably.

Q. Well, they didn't collect the mass or pile from one tank, and then collect the mass or pile from the other, did they?

A. I couldn't say; I wasn't there when they did it.

Q. You don't know. Well, you saw a mass or pile of stuff to fill a hat, and you don't know whether it came out of one tank or two, then, do you?

A. No, I don't recall. I presumed that it came out of both tanks.

Q. Now then at the time when you examined the bottom of these tanks to see that these bottoms had been welded, that was the same time that you examined the sides of the tanks and saw that they had not been welded; is that right?

A. I may be making a mountain out of a mole hill, but I don't believe I ever stated that the sides of the tanks were not welded. I simply stated that I don't remember as to whether they were welded or not, because it wasn't called to my attention. I remember about the bottoms of the tanks.

Q. And you don't know whether the sides were welded or not?

A. No, I don't make any statement about that.

Q. Your mind is perfectly blank on the question as to whether or not the sides were welded, is that right?

A. Yes, sir. I don't remember that at all.

Q. Don't remember the first thing in the world about it?

A. No, sir.

Q. And your memory is just as good today as it was yesterday on that question, isn't it?

A. I think so.

(At 12:01 P. M. hearing was recessed until 1:45 o'clock p. m. of the same day, to-wit, May 18, 1939.)

Afternoon Session.

2:00 o'clock P. M., Thursday, May 18, 1939.

* (Hearing resumed pursuant to the noon recess; the witness ALLEN SIMMON resuming the witness stand upon further cross examination.)

By Mr. Botts:

Q. Now, Mr. Simmon, do you recall yesterday afternoon the following questions and answers, reading from page 2073:

"Q. Do you know of your own knowledge that there was any welding done on the tanks themselves at that time?"

"A. Yes, I do."

"Q. Now just state where was this welding on the tanks?"

"A. In all the seams; the seam on the bottom of the tank and up each side, as I recall it."

"Q. Now, Mr. Simmon, do you say that all the seams of the gasoline tanks were welded, at that time?"

"A. Yes, sir."

Do you remember making that statement?

A. Yes, I think I do.

Q. And today you said only the bottoms were welded, didn't you? Do you have any explanation to make of that?

A. I said as I recall it today that I knew the bottoms were welded; I didn't know whether I had seen welding on the side or not.

Q. These pans that were made to go underneath the tanks, as I understand it, you are not now prepared to say whether they were made of zinc or what they were made of, is that right?

A. My impression of that hasn't changed at all. I thought they were made of zinc.

Q. That is merely an impression?

A. That is right.

Q. And am I right that you didn't see these pans until they were underneath the tanks of the vessel, is that right?

A. No, I think I saw them before they were installed.

Q. Did you see them when they were being made?

A. No; I think they were lying there right close to the job, ready for installation, with the tanks.

Q. You didn't see them when they were being made?

A. No, sir.

Q. Then I call your attention to this question on page 2087, the question:

"Q. Did you see these pans after they had been constructed?"

"A. I saw them when they were being made there on the dry-dock".

Is that true?

A. Yes, I think it is substantially. I saw the pans there, but I don't believe that I had any intention of saying I saw them while they were being built.

Q. When you said here that you saw them while they were under construction, you didn't mean that, is that correct?

Mr. Underwood:

We object to that, he didn't say that.

Q. When you stated here that you saw them while they were being made, did you mean that or not?

A. I didn't mean that I saw them while they were actually working on them, making them; no, sir.

Q. Then your testimony yesterday, if it conveyed that impression you want to correct it, is that right?

A. Yes, sir.

Mr. Botts:

That is all at this time.

The Court:

Did you want to cross him on the matters that I allowed the answer to be made on? * * *

Mr. Botts:

I would rather not cross him on that.

By Mr. Matteson: ✓

Q. I would like to ask you a little more about this pile of material you saw that came out of one or more of the tanks. Was that hard material or soft material?

A. I didn't make a thorough enough examination of it to say; I mean, I didn't feel it, I just looked at it.

Q. Was it in small pieces like sand or dust, or was it in large pieces.

A. No, it seemed to me to be more of somewhat the nature as if you dumped out some mud,—that texture.

Q. It was moist, was it?

A. Composite mass.

Q. Was it wet—moist?

A. I don't know anything as to that. I mean, it wasn't like dust, it wasn't just loose dust, it was more cohesive than that.

Q. It wasn't like rust or scale that you would find out of a tank?

A. No, I don't think so.

Q. Rust or scale is the sort of material that you would get out of a tank by knocking, isn't it?

Mr. Underwood:

I object to that on the ground the witness is not shown to be qualified; we haven't called him as an expert.

The Court:

I think he can answer from the standpoint of ordinary common knowledge. I overrule the objection.

(The question was read:)

A. Yes, I would think so, if there was any there.

Q. What would your idea of a lot of such material be, if you were going to use the expression "a lot of it"? What would you have in mind? Would you have in mind the hatful that you spoke of, or a larger quantity?

A. Well, I don't remember; did I say something about a lot of it?

Q. That isn't the point. I said, if you were to use that expression, what would you intend to convey by it?

A. A lot of what? Of the same kind of material?

Q. A lot of the same kind of material, yes.

A. Well, I think that would depend upon circumstances. I would think that—

Q. If you were going to say that you got a lot of it out of the tank, would you say that what you saw was a lot?

A. Yes, I would think it was, to come out of a tank like that.

Q. Then when you testified yesterday that Captain Nelson "showed me a lot of residue and stuff that he knocked out of the tanks", you had in mind only this quantity that you now speak of as being perhaps a hatful?

A. Yes, sir.

Q. But you didn't have in mind rust and scale such as you would knock out of a tank?

A. No, all I had in mind was this material that was shown to me as being taken out of the tanks.

Q. Now I think you said that you saw the tank both before the crowns were taken out, while they were out, and after they were put back; is that right?

A. Yes; I think that is correct.

Q. Can you tell us this: When the tanks—when you saw the tanks first, before they were taken apart, were the edges of the crowns and the edges of the tank together at that time, even with each other?

A. I don't believe I know. I don't remember examining that feature of it at that time at all.

Q. You can't tell us whether that was so at that time or not?

A. That is right.

Q. When you saw the tanks with the crowns or bottoms out of them, can you tell me whether any part of the side seam of the tank had been loosened,—any part of the line of rivets running up the side of the tank?

A. I don't recall that they were; I couldn't say.

Q. That would probably have to be done, to release the crown, would it not?

Mr. Underwood:

I object to that on the ground that the witness has not been shown to be qualified as a boiler maker. * * *

The Court:

Isn't your question directed to him as an expert on that?

Mr. Matteson:

If your Honor please he has testified to a lot of things here, and I am trying to test his recollection and find out what he recalls. * * *

The Court:

I think that question is subject to the objection; I will sustain the objection.

Q. Well, then as I understand it, your mind is a complete blank as to whether the side seam was released or not?

A. I have no recollection of the side seam at all.

Q. You spoke, or someone—I think you spoke of it, your being interviewed by Mr. Batchelor and asked for information about the Seminole; do you recall that?

A. Yes, sir.

Q. And at that time Mr. Batchelor asked you, did he not, as to what you remembered as to the things that you had done with respect to the Seminole?

A. I don't recall that. Mr. Batchelor's questions as I recall followed a different line of questioning altogether.

Q. Isn't it a fact that you, in words or in substance, at the time you talked with Mr. Batchelor, told him that the only definite thing you could recall was that you had made several attempts, at the request of Mr. Scott, to charter the Seminole, but without success?

A. State that again, please.

Q. Isn't it a fact that at the time Mr. Batchelor talked with you, that he asked you as to the things that you had done in relation to the yacht Seminole, and you told him at that time that the only definite thing you could recall was that you had made several attempts, at the request of Mr. Scott, to charter the boat, but without success.

A. I might have told him that I had made several attempts to charter the boat, without success; but I don't recall limiting it to that entirely, in relation to the boat.

Q. I show you a letter which I believe is signed by you, on September 28, 1935. Do you recall that letter?

A. I don't recall the letter. I see my signature here.

Q. That is your signature?

A. Yes, sir.

Q. That is a letter that you sent Mr. Batchelor?

A. I believe it is.

Q. And that was in reply to a letter of which this second document that I hand you is a copy, was it not?

A. Yes, sir.

Mr. Matteson:

I would like to offer these if your Honor please.

Mr. Underwood:

I have no objection.

(The said letters were admitted in evidence and marked respectively Libelants' Exhibits 118 and 119.)

Q. Now one more thing, Mr Simmon. You have been asked about several things that you said in your testimony yesterday, and I would like to ask you about one more. Yesterday, in answer to one of my questions, I believe you stated that according to your recollection there was no woodwork in the alleyway that went past the engineroom. Do I understand you now that you didn't understand that question to refer to the alleyway that went past the engineroom?

A. I didn't understand the question to apply to the alleyway itself. As I remember it, we were discussing the engineroom, discussing the various walls in the engineroom, and I thought the question asked, referred to the walls of the engineroom as you would look at the inside of the engineroom.

Q. And you really gathered the impression at that time from my question that I was suggesting that there might be woodwork on the bulkheads in the engineroom?

A. No, I didn't understand that at all. I knew you were talking about the wall along the alleyway, but I thought you were talking about it from the viewpoint of

being inside of the engineroom, as to what the wall was made of.

Q. Well, it would be very unusual for there to be any woodwork in the engineroom, with that type of a wall, would it not?

A. I would think so.

Q. I would like to read you the questions and answers, so we will be perfectly clear on this: Page 2079, my question was:

"Q. Do you recall the alleyway that went past the engineroom on the main deck of the Seminole?"

"A. You say the main deck?"

"Q. We will say, the lower deck, I will put it that way."

And your answer was "Yes." That's clear; the alleyway outside the engineroom is referred to, is it not?

A. Yes, sir.

"Q. As you went along that alleyway there was a partition on the side between the engineroom, separating the alleyway from the engineroom, was there not?"

"A. Yes, sir."

"Q. Was there any paneling or woodwork on that partition, do you recall, or was it painted steel plate?"

"A. I think it was all steel work."

I think there is a mistake in the minutes there; a;— there should be, A.

Mr. Underwood:

I will concede there is at least one mistake there.

Q. You said "I think that was all steel work".

"Q. You don't recall seeing any woodwork there?"

"A. No, I don't. There was a window in it, I remember that."

"Q. A window leading into the engineroom?"

"A. Yes."

"Q. There were also windows leading from the passageway to the outside of the ship?"

"A. Yes, sir."

Now do you say at this time that you did not understand, when you gave those questions and answers, that we were talking about the alleyway itself?

A. No, I thought the discussion was in relation to the engineroom, as to what the dividing wall was between the alleyway and the engineroom.

Q. What was there about these questions that confused you on that point?

A. I don't know, I guess it was just the general trend of the discussion. As a matter of fact I don't know whether there was any wood there or not, from the outside of it,—I mean the outside of the engineroom.

Q. You gave an explanation of these answers on your re-direct examination by Mr. Underwood; I assume that you had discussed this testimony that you gave yesterday, with Mr. Underwood before you made your explanation this morning?

A. With regard to this point?

Q. Yes.

A. No. I don't think so.

Q. You discussed that with no one before you made the explanation on re-direct this morning?

A. I don't recall doing so.

Q. And did anyone call your attention, before you made the explanation today, to the fact that Captain Baker had testified that that partition was covered with wood?

A. No, I don't know anything about his testimony at all.

Q. You say you don't even now know that Captain Baker testified that that partition was covered with wood?

A. No.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Simmon, do you remember who it was that Mr. Batchelor told you he represented when he called on you?

A. I think he told me it was Captain Pilkington.

Q. Sure about that? Is that your best recollection?

A. Yes, sir.

Mr. Underwood:

That is all.

Mr. Botts:

I want to reserve the right to recall this witness after I have had a chance to go through these bills over there. I probably won't want to ask him to come back, but I don't want to waive that right until I have had a chance to examine those bills.

The Court:

Is this witness under subpoena?

Mr. Underwood:

No, sir, he is not.

The Court:

Will you return if Mr. Botts calls you and tells you he wants you to come back?

A. Yes, sir.

Mr. Botts:

I think it is improbable that I will.

The Court:

Either Mr. Botts will call you or else he will tell Mr. Underwood and he will call you. In other words, when you get information you are wanted, you come back.

A. I will.

(Witness excused.)

2722 MR. CHARLES ARTHUR WEISS, JR., as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name, please?

A. Charles Arthur Weiss, Jr.

Q. Where do you live?

A. Stewart Manor, New York.

Q. What is your business, Mr. Weiss?

A. I am an accountant.

Q. How long have you been an accountant?

A. Since 1915.

Q. By whom are you employed?

A. I am employed by Bessemer Investment Company.

Q. I show you a book and ask you if you can tell me what that book is.

A. This is the ledger of Mr. John S. Phipps.

Q. Covering what period of time?

A. From the year 1903 to 1919.

Q. Is that the ledger that covers his personal financial affairs?

A. Yes, sir.

Q. Do you know where the book just came from? Do you know who has custody of it?

A. You have custody of it.

Q. Who had custody of it before I got it?

A. Our office.

Q. Have you had anything to do with that book yourself, in the past?

A. Yes, I have had charge of the accounts and the records of numerous individuals and corporations of the Phipps family.

Q. Is that one of the books that have been in your charge?

A. It is.

Q. Are you in a general way familiar with the book?

A. Yes, sir.

Q. Can you refer in that book to any capital account for the Seminole?

A. Yes, I can.

Q. You have the page?

A. Yes, sir, page number 5.

Q. Can you tell me what that is?

A. That is an account headed, houseboat Seminole, and there is an entry dated—

Q. You won't be allowed to read it. Just tell me whether it is a capital account or some other account.

A. It is a capital account.

Q. It is a capital account of John S. Phipps?

A. Of John S. Phipps.

Mr. Underwood:

If the Court please, I offer in evidence a photostatic copy of that capital account.

Mr. Botts:

May I ask just one question: This "Transferred to new L" I suppose that means, new ledger?

A. New ledger.

Mr. Botts:

I don't see the materiality of it, but I have no objection.

Mr. Matteson:

There is no relevancy to the matter, or materiality.

The Court:

We will put the burden on Mr. Underwood, upon argument, to show the materiality. We will admit it.

Mr. Botts:

That is the only page of the ledger that has anything to do with the Seminole, is it?

Mr. Underwood:

It is not.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-P.)

Q. Now Mr. Weiss, this document which you have just identified as Mr. Botts says contains the entry, transferred to new ledger. I show you another book, can you tell me what that book is?

A. This is the ledger of Mr. John Phipps.

Q. For what period of time?

A. For the period from May 1919 to December, 1922.

Q. Does it follow next after the one you looked at before?

A. It does.

Q. Now is there in that book any capital account for the Seminole?

A. Yes, sir.

Q. Will you point it out, please?

A. It is on page 20.

Mr. Underwood:

I offer a photostatic copy of that page.

Mr. Matteson:

If your Honor please, I would like to register a formal objection based upon its materiality and relevancy; I don't object to its competency.

Mr. Botts:

I just submit it with the same observation I made with reference to the other. If the Court thinks it may possibly have any materiality I won't object.

The Court:

I will admit it.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-Q.)

Q. Mr. Weiss this Exhibit 4-Q refers in the right hand column to a new ledger; will you tell me whether this capital account was continued after this date?

A. It was.

Q. And where was it continued?

A. In Mr. John S. Phipps' next ledger.

Q. And what have you got after that?

A. I have a ledger page taken from his ledger.

Q. I notice that heretofore we have had books, now you have a single sheet of paper. Will you tell me what happened about that, at that time?

A. In the beginning of 1923 we changed our ledgers then from the bound ledger to the newer form of a loose leaf ledger.

Q. How many of the books of the members of the Phipps family and corporations in which they are interested, and which you know about, made that change at that time?

A. Practically all of them were changed.

Q. And this sheet which you show me, what is that?

A. This is the capital account of the yacht Seminole.

Q. Of whom?

A. Of Mr. John S. Phipps.

Q. Where did this ledger sheet come from? From his ledger?

A. I took it from his ledger.

Mr. Underwood:

I offer a photostatic copy of that ledger sheet.

Mr. Matteson:

If your Honor please, I would like to add to my former objection, the objection that a sheet from a loose leaf book, even if, it is bound in a book, it is no evidence of genuineness, whatever.

(Discussion was had.)

Mr. Botts:

So far as I am concerned I have no objection. . . .

The Court:

I will admit it.

(Said photostat was admitted in evidence and marked Respondents' Exhibit 4-R.)

Mr. Botts:

I don't think the witness has stated what period of time that covers; I think that ought to appear.

Mr. Underwood:

It speaks for itself, I say. You can ask any questions you think pertinent on cross examination.

Q. Now I notice on this Exhibit 4-R, there is a reference to Seminole Boat Co. on July 1, 1930. Can you tell me whether there is any record that follows this one?

A. There is.

Q. Do you have it?

A. Yes, I do.

Q. Is that it?

A. This is it.

Q. What is that?

A. This is a ledger sheet taken from the ledger of Mr. John S. Phipps, recording his ownership of twenty shares of capital stock of Seminole Boat Company.

Mr. Underwood:

I offer photostatic copy of that sheet in evidence.

Mr. Matteson:

If your Honor please, I take it our position is maintained as to all these documents without repeating ourselves?

The Court:

All right.

Mr. Botts:

I am going to object, on the ground it does not show what period of time is covered by this. I am going to move to strike the previous exhibits, on the same ground.

The Court:

I don't catch the significance of your objection.

Mr. Botts:

I would just like to know over what period of time this ledger sheet purports to cover the transactions; whether it is one day, one week, one month or ten years.

The Court:

In other words, you want, while the first entry on this is November 30, 1928, you don't know whether that is the beginning of this record.

Mr. Botts:

And I don't know when is the ending of the record or anything about it.

The Court:

I think the witness ought to explain that, Mr. Underwood.

Mr. Underwood:

If your Honor please, isn't that something to be brought out on cross examination?

The Court:

Possibly so.

Mr. Botts:

It does not have to be.

The Court:

You offer a book or ledger I will say, and I think it is proper to show what period that ledger covered, not what the entry showed but the period of time the ledger covered.

Q. Mr. Weiss, will you take these four sheets, three of which have been marked and the last of which has not yet been marked, and tell me first what you know of your own knowledge as to the period of time covered; second, interpret for us what the sheets, and the books show as to the period of time covered.

A. I know from my own knowledge that the books cover the period from 1921 to date. Previous to that, I am

reading from the records. The first document covers the period from February 24, 1915 to May 31, 1919. The second document, from May 31, 1919 to January 1st, 1923. The third, from January 1st, 1923 to July 1st, 1930.

The Court:

Let me just ask you; you are reading those dates which bear the last entry on these particular pages?

A. That is right, sir.

The Court:

Well, is that because the entry shows that it was transferred to a new ledger at that time?

A. Either transferred to a new ledger or this account closed.

The Court:

For instance, this one right here, could it cover a period of time in keeping Mr. John S. Phipps' books, in regard to the yacht Seminole, for an earlier date than the first entry and a later date than the last entry?

A. No, sir.

The Court:

It could not?

A. No, sir.

Mr. Botts:

There is one more that you have offered that he hasn't covered the period?

By Mr. Underwood:

Q. What period of time does this last one, as yet unmarked, cover?

A. That covers the period from November 30, 1928 to the present time; it is still in force. This is his account on his books at the present time.

Q. Now there is an overlapping of dates.

The Court:

Have you an offer there?

Mr. Underwood:

Yes, I offer the photostatic copy.

Mr. Botts:

Now I withdraw my objection.

Mr. Matteson:

I simply want to maintain my position.

The Court:

The objection is overruled; admitted in evidence.

(The photostat offered, was admitted in evidence and marked Respondents' Exhibit 4-S.)

By Mr. Underwood:

Q. Mr. Weiss, there is an overlapping of dates between July 1, 1930 on Exhibit 4-R and November 30, 1928 on Exhibit 4-S; can you explain that to me?

A. At both times—during that time both of these ledger pages were part of Mr. John S. Phipps' ledger.

Q. What is the significance of the date July 31, on Exhibit 4-R?

A. It records the transfer of the amount of that account to the account headed, Seminole Boat Company.

Q. Exhibit 4-S?

A. 4-S.

Q. What is the significance of the date, November 30, 1928 on Exhibit 4-S?

A. That records five shares of Seminole Boat Company stock set-up on this ledger page.

Q. And does that have any significance as to the date when the purchase was made?

A. That is the purchase of five shares of stock; that records the purchase of five shares of stock.

Q. Do you have anything to do with the personal accounts of Mr. H. C. Phipps?

A. I do. I have charge of the keeping of his personal accounts.

Q. I show you a book, can you identify that book for me?

A. This is the ledger of Mr. Henry C. Phipps.

Q. Can you tell me whether that contains any capital account entry in respect to the Seminole?

A. It does.

Q. Show it to me.

A. Page 93.

Q. Is that the capital account for Mr. H. C. Phipps?

A. It is.

Q. On the Seminole?

A. It is.

Mr. Underwood:

I offer this photostatic copy.

Mr. Botts:

Covering what period?

Q. What period of time does it cover?

A. This covers June 30, 1919 to January 1, 1923.

Mr. Botts:

No objection.

The Court:

It is admitted.

(The said photostat was admitted in evidence and marked 'Respondents' Exhibit 4-T.)

Q. Have you found in Mr. H. C. Phipps' books, any prior capital accounts in respect to the Seminole?

A. No.

Mr. Underwood:

May I have that, Mr. Batchelor, please.

Q. Now this Exhibit 4-T contains an entry January 1, 1933, new ledger; what happened at that time?

A. That is when the new system of loose leaf ledger was inaugurated.

Q. What happened then?

A. That account was transferred to a new ledger sheet in Mr. Henry C. Phipps' ledger.

Q. Have you the sheet there?

A. I have.

Q. Is that it?

A. This is it.

Mr. Underwood:

I offer a photostatic copy of that.

Mr. Botts:

Did you cover the period of time?

Q. What period of time does that cover?

A. From January 1, 1923 to July 1, 1930.

Mr. Matteson:

I just want to maintain my position all through.

The Court:

It is admitted.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-U.)

Q. What happened to Mr. H. C. Phipps' capital account when this account was closed out?

A. That amount in that account was transferred to the Seminole Boat Company Capital stock account on July 1, 1930.

Q. Do you have that sheet?

A. I have that sheet.

Q. Is that a sheet from Mr. H. C. Phipps' personal ledger?

A. Yes, sir.

Q. Is that the original sheet?

A. It is.

Q. What period does that cover?

A. From November 30, 1928 to April 1935.

Mr. Underwood:

I offer a photostatic copy of that.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-V.)

Q. Now what do you have to do if anything with the personal account books of Mrs. Amy Guest?

A. I also have charge of those.

Q. Does she have a capital account for the Seminole Boat Company?

A. She does.

Q. Have you a sheet?

A. Yes, sir.

Q. Are her books looseleaf books too?

A. Her sheets are loose leaf.

Q. What sheet is that that you have?

A. This is the ledger sheet of Seminole Boat Company capital stock, taken from ledger of Mrs. Amy Guest.

Mr. Underwood:

I offer photostatic copy of that in evidence.

Q. What period of time does it cover?

A. From April, 1935 until the present time, and is still a part of and an open account on her ledger.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-W.)

Q. Do you know of any other capital accounts in respect to the Seminole?

A. No.

Q. I show you another book, tell me what that is.

A. This is the ledger of Mr. Henry C. Phipps for the years 1914 and '15.

Q. Do you find any pages in there that refer to the Seminole?

A. On page 147 there is an account entitled, Yacht Seminole Expense.

Q. On what other pages does any reference to the Seminole appear in that book?

A. Page number 178, page number 179 and page number 180.

Q. Now on one of those pages, 178, some entries other than those in respect to the Seminole, appear, do they not?

A. That is correct.

Mr. Underwood:

I offer photostatic copy of those pages insofar as they relate to the Seminole.

Mr. Matteson:

That is Henry C. Phipps'.

Mr. Underwood:

That is correct.

Mr. Botts:

You said, insofar as it has reference to the Seminole; is there anything that does not refer to the Seminole, in those pages?

Mr. Underwood:

Not that I know of, but what I meant was, I offer the pages of that, and ask leave to substitute a photostatic copy. You may look at those pages.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-X.)

Q. Have you brought with you, Mr. Weiss, the ledger of H. C. Phipps beginning with 1915 and down to 1919?

A. No, I have not.

Q. Then you can pick up the expense account of H. C. Phipps in connection with the Seminole in 1919?

A. I can.

Q. Will you identify that in that second ledger, please?

A. That is on page 153.

Q. That is an expense account of Mr. H. C. Phipps in connection with the Seminole?

A. Yes, sir.

Mr. Underwood:

I offer photostatic copy of page 153. What time does that cover, Mr. Weiss?

A. Covers from May 1, 1920.

Mr. Botts:

May 1, 1920. For the purpose of readily identifying it, do you have any objection if they write "J. S. Phipps" I believe, on this?

Mr. Underwood:

H. C.

Mr. Botts:

Do you mind if they write that on top of that?

A. —to December 3, 1922.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-Y.)

Q. Now following that, was the account transferred to loose leaf sheets?

A. That is right.

Q. Have you the loose leaf sheets?

A. I have.

Q. What period of time does that sheet cover?

A. This page covers from 1923 through 1935.

Mr. Underwood:

I offer photostatic copies of that sheet.

Mr. Botts:

I have no objection.

(The said two photostatic sheets were admitted in evidence and marked Respondents' Exhibit 4-Z.)

Q. Mr. Weiss, I show you a book which is marked John S. Phipps, 1903—1919; can you tell me what that is?

A. That is Mr. John S. Phipps' ledger for that period.

Q. And where in that ledger first appears any reference to the Seminole?

A. On page 249 there is an account called Yacht Expense.

Q. And that is an expense account?

A. Yes, sir.

Q. What other pages in that book contain entries with reference to John S. Phipps' expenses for the Seminole?

A. Page 318.

Q. Any others?

A. No others.

Q. What period of time do those two pages, 249 and 318, cover?

A. They cover the period from September 14, 1915 through May 3, 1919.

Mr. Underwood:

I offer photostatic copies of each of those pages.

(The said photostats were admitted in evidence and marked Respondents' Exhibit 5-A-1 and 5-A-2.)

Q. It appears from page 318 that this account was transferred to another ledger.

A. That is right.

Q. Can you show me that?

A. This is the ledger of Mr. John S. Phipps for the period from May 1919 to December 1922; Yacht Expenses continue on page 171 and 176.

Q. And the period covered by those pages, is what?

A. May 31, 1919 to February 28, 1923.

Mr. Underwood:

I offer photostatic copies of those.

(The said photostats were admitted in evidence and marked Respondents' Exhibit 5-B-1 and 5-B-2.)

Q. Now it appears from page 176 that there was a transfer to a new ledger.

A. That is right.

Q. Is that the loose leaf type?

A. That is right.

Q. Do you have the sheets there?

A. I do.

Q. What period do those sheets cover?

A. They cover from January 1923 and are still a part of his ledger, right down to the present time.

Mr. Underwood:

I offer photostatic copies of these sheets.

Mr. Botts:

Is that Mr. John S. or H. C.?

Mr. Underwood:

We have finished with H. C.: These sheets being four in number, for the period January 31, 1923 through the year 1935.

Mr. Botts:

Do I understand that you are not offering these sheets so far as they cover '36 and '37?

Mr. Underwood:

Correct.

Mr. Botts:

I object unless you offer all of the sheets.

Q. Mr. Weiss, I show you a sheet and ask you to tell me what that is.

A. This is the Seminole Expense Account from the ledger of Mrs. Amy Guest.

Q. What period of time does that sheet cover?

A. From May 1935 down to the present time, and is still an open account in her ledger.

Q. What is the last entry?

A. November, 1938.

Mr. Underwood:

I offer so much of that sheet as includes the year 1935.

Mr. Botts:

I object.

Mr. Underwood:

If your Honor please, I have offered Expense Accounts in respect to the Seminole of Mr. H. C. Phipps, beginning from about 1919, down to 1935. I have offered the Expense Accounts of Mr. J. S. Phipps from the beginning—that is 1915 down through the year 1935.—Now the ledger sheets which are here, carry the expense account down through November 1938, and I have offered them only through '35. Now the same is true of Mrs. Guest; I produced Mrs. Guest's ledger sheet which covers the period 1935 to November 1938, but I have offered only so much of that as covers the year 1935; and Mr. Botts, and perhaps Mr. Matteson, too, object, because I don't offer the whole.

Mr. Botts:

If you will offer the balance of the sheet, carrying it down to date, and not offer part of it, I have no objection. But I don't think you ought to offer a part without offering all; I think it is an incomplete record, otherwise. I object on that ground.

Mr. Matteson:

I join in that objection.

The Court:

Well, in order that we may get along, I think the whole thing ought to go in. I will rule that way and let you argue it. * * *

Mr. Underwood:

My position as to that is this, your Honor: This fire happened in June 1935. The question in this case, the critical time in this case, is the day of the fire. As to this

point, the issue is whether or not the Seminole Boat Company was a live, real corporation on that date, or a sham and a legal fiction. Nothing that transpired since that time has any bearing on what happened on that date. We could have dissolved the corporation the following day, and it would have made no difference as to its health and vigor and legal reality, on the day of the fire. The reason I have gone through the year 1935 instead of stopping on June 24th is because the accounts were not posted up through June 24th until after that date, but before the end of December, 1935. * * *

Mr. Botts:

In view of the fact that it is going in, I won't indulge in any comments on it at this time.

The Court:

I rule with the objector, and then you refuse to put in anything at all, with that ruling? Or do you put it in and reserve the right to re-argue the point at the final hearing?

Mr. Underwood:

I don't want to find myself in the position of having anything after 1935 going in upon my motion. My suggestion would be to have them offer 1936, '37 and '38, if they desire, and let me object.

Mr. Botts:

I am not meeting any of it.

The Court:

Suppose we meet that at the time; but in view of my ruling, you are offering the entire paper, but limited to the period that you specify?

Mr. Underwood:

I offer the whole sheet of paper, but no figures on it that relates to any time subsequent to 1935.

The Court:

I will admit it, with the contention of the Libelants.

Mr. Underwood:

Reserving to me the right to argue my legal right?

The Court:

That is right.

(The four photostats heretofore offered as a group, were admitted in evidence and marked Respondents' Exhibit 5-C-1, 5-C-2, 5-C-3 and 5-C-4; and the photostats showing Expense Account from ledger of Mrs. Guest, last offered, was admitted in evidence and marked Respondents' Exhibit 5-D.)

Q. Mr. Weiss, have you made an analysis of the expense of H. C. Phipps and John S. Phipps through the years beginning with 1914 and going down through 1935?

A. I have, from those books, yes, sir.

Q. I notice as to H. C. Phipps, you have skipped the years 1916, '17, '18 and '19, is that right?

A. That is right.

Q. That is because we don't have the books here?

A. That is right.

Q. Does this analysis accurately state the amount paid by both of those men as shown by these books?

A. It does.

Q. —during those years?

A. That is right.

Q. This column at the right, shows the difference between the amounts paid by them in five different years?

A. That is right.

Mr. Underwood:

I offer this, subject to control by the original records themselves.

Mr. Matteson:

As a summary of what the books show?

Mr. Underwood:

Correct.

(By Mr. Underwood):

Q. I notice in the right-hand column under 1920 there was a difference of a penny, and also 1921 and also 1923. What is the reason for those differences?

A. The ledgers show those differences because the total amount ended in an odd figure which wasn't devisable by two.

Q. Now in the year 1929 there is a difference of \$3,007.57; do you know the reason for that?

A. There were some personal expenses in connection with the Yacht Seminole paid for by Mr. John S. Phipps that were charged in this account.

Q. Tell what they were.

A. I think they were incurred in connection with a special trip of the boat.

Q. In the year 1932 there is a difference of \$83.63, Mr. John S. paying that much more than Mr. H. C.; do you know the reason for that?

A. I do not.

Mr. Underwood:

I offer the analysis merely as a convenient summary of what the books show.

(Thereupon the analysis statement above referred to was marked Respondents' Exhibit 5-E.)

Q. What is the total amount paid by Henry C. Phipps for the years 1920 to 1935, inclusive?

A. \$166,932.47.

Q. And Mr. John S. Phipps for the same period?

A. \$172,758.57.

Q. And Mrs. Guest?

A. \$2734.89.

Q. Now, except for the differences represented in the righthand column, how does the amount contributed or paid by Mr. John S. Phipps compare with the total paid by Mr. H. C. and Mr. Guest?

A. They are equal.

Q. Mr. Weiss, what is the nature of the expense that is included in these ledger sheets that relate to expense as distinguished from capital?

A. The items covered in the ledger pages marked "Yacht Seminole Expense" represent the expenses of upkeep and maintenance of the Yacht Seminole.

Q. How were the operating expenses charged?

A. The operating expenses on the books of the Messrs. Phipps and Mrs. Amy Guest were charged in the miscellaneous personal disbursements account.

Q. Now, I show you a check, duplicate voucher and a statement. Will you identify those?

A. The check is a check of Bessemer Investment Company drawn on the Central Hanover Bank & Trust Company, dated September 9, 1935, to the order of Palm Beach Company in the amount of \$357.92.

Q. Can you tell me from the voucher to whom that sum was charged and in what amounts?

A. It was charged to Mrs. Amy Guest in the sum of \$178.96 and to Mr. J. S. Phipps in the sum of \$178.96.

Q. Can you tell me what the statement attached to the duplicate voucher is?

A. It is a statement of the Seminole Boat Company in account with Palm Beach Company for July, 1935.

Mr. Underwood:

I offer this.

Mr. Botts:

No objection.

(Thereupon the statement, duplicate voucher and check were marked respectively, Respondents' Exhibits 5-F-1, 5-F-2 and 5-F-3.)

Q. I did not start as early in the year as I intended to, Mr. Weiss; I show you another check, voucher and statement. Will you tell me what that is?

A. This is a canceled check of Bessemer Investment Company drawn on the Central Hanover Bank & Trust Company, dated May 27, 1935, to the order of Palm Beach Company, in the sum of \$1224.91.

Q. Can you tell me from the duplicate to whom that was charged?

A. It was charged to Mr. John S. Phipps.

Q. What is the statement attached to the duplicate?

A. A statement of the Seminole Boat Company.

Q. What period?

A. January to April, 1935.

Q. What relation does the amount paid and charged to Mr. Phipps bear to the total of the statement?

A. Except for one penny, it is exactly one-half.

Mr. Underwood:

I offer that.

Mr. Matteson:

No objection.

(Thereupon the check, voucher and statement above referred to were marked Respondents' Exhibits 5-G-1, 5-G-2 and 5-G-3.)

(By Mr. Underwood):

Q. I show you another check, duplicate voucher and statement. Will you tell me what that is?

A. Canceled check of Bessemer Investment Company drawn on Central Hanover Bank and Trust Company, dated May 27, 1935, to the order of Palm Beach Company in the sum of \$1224.90.

Q. Can you tell me from the duplicate to whom that was charged?

A. It was charged to Mrs. Amy Guest.

Q. What does the statement cover?

A. The statement is a statement of Seminole Boat Company for the period of January to April, 1935.

Q. What is the total?

A. \$2449.81.

Q. What relation does the amount charged to Mrs. Guest bear to the total of the statement?

A. Except for one penny it is one-half.

Mr. Underwood:

I offer that.

Mr. Botts:

That is the balance—

Mr. Underwood:

The statements are identical, I believe, and this is Mrs. Guest's half.

Mr. Botts:

That is what I thought. That is all right.

The Court:

Let it be admitted.

(Thereupon the documents above referred to were marked Respondents' Exhibits 5-H-1; 5-H-2 and 5-H-3.)

(By Mr. Underwood):

Q. I show you another check, duplicate voucher and statement. Can you tell me what they are?

A. Canceled checks of Bessemer Investment Company on the Central Hanover Bank and Trust Company, dated December 30, 1935, to the order of Palm Beach Company, in the sum of \$2662.07.

Q. Can you tell me from the duplicate voucher how that sum was charged?

A. Mrs. Guest was charged \$1331.03 and Mr. John S. Phipps \$1331.04.

Q. Can you tell me what the statement attached to the duplicate is?

A. It is a statement of Seminole Boat Company in account with Palm Beach Company, May to November, 1935.

Q. How do the amounts charged to Mr. John S. Phipps and Mrs. Guest, respectively, compare with the total amount of that statement?

A. They are each one-half, except for the one penny difference.

Mr. Underwood:

If Your Honor please, I offer these, and I would like to offer only so much of the statement attached as relates to disbursements or charges incurred down through the date of the fire. They are inextricably bound up together here, and this includes some legal expenses and some other matters.

Mr. Botts:

I object on the same grounds as I stated relative to the ledger sheet, without stating the objection in detail, assuming that the Court will probably follow the same course.

Mr. Underwood:

I am afraid I will have to offer the whole thing.

The Court:

I do not see how you could limit your offer there.

Mr. Underwood:

I cannot phrase it without taking too much time, so I will offer the whole thing.

Mr. Botts:

No objection.

Mr. Matteson:

No objection.

(Thereupon the documents above referred to were marked Respondents' Exhibits 5-I-1; 5-I-2 and 5-I-3.)

(By Mr. Underwood):

Q. Now, Mr. Weiss, you have mentioned on more than one occasion charges to Mrs. Amy Guest and John S. Phipps on these vouchers. Tell me just what that indicates when you and I have spoken of "charge".

A. This is the same as a payment by these individuals. These individuals had accounts with Bessemer Investment Company and Bessemer Investment Company would make payments of this nature for them and charge their accounts with that amount.

Q. So that their accounts would be diminished by the amounts stated?

A. Yes.

Q. Mr. Weiss, I show you Exhibit 4-K, which Mr. Phipps testified he okayed in the sum of \$1384.47 covering expenses of the fishing trip to the Florida Keys in April, 1935. Can you tell us whether or not any part of

that is included in the books that you have referred to and illustrated by this summary, Exhibit 5-E?

A. No, sir.

Q. Will you illustrate the course of charging such expense as this included in Exhibit 4-K, the fishing trip, and the portion to Mr. H. C., Mr. J. S. and Mrs. Guest?

A. The books of Mr. John S. Phipps, Mr. Henry S. Phipps and Mrs. Guest are made up from reports and statements of the transactions at their origin; they are audited and classified and journalized in the records of these individuals. Disbursements for their account for the Seminole Boat Company, upkeep and maintenance, would be charged in the account that this tabulation is made from. Items for personal expenditures reported paid by them are charged on their books to a Miscellaneous Disbursements Account, into which other personal charges are posted.

Q. The document you first referred to in your answer is Exhibit 5-E, the yellow sheet, upkeep and maintenance charges, is that right?

A. Yes.

Q. And the second one you referred to is fishing trip expense, Exhibit 4-K.

A. That is right.

Q. So that, as I understand it, the books as represented by Exhibit 5-E do not include expenses of operation on a cruise, is that correct?

A. That is correct.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Weiss, I refer now to Respondents' Exhibit 4-S, the Seminole Boat Company account of John S.

Phipps. I see the first entry in this book under date of November 30, 1938 is \$50.00. What does that mean?

A. The first entry in this account is dated November 30, 1928.

Q. I meant 1928. What does that mean?

A. That represents recording ownership of five shares of capital stock of Seminole Boat Company at \$10.00 per share.

Q. Now the second entry is \$1,050.00. Will you likewise indicate what that means—it is dated July 1, 1930.

A. The second entry of July 1, 1930, in the sum of \$10,000.00 is for 15 shares of capital stock of the Seminole Boat Company, and that makes a total of \$10,050.00 for 20 shares of capital stock. This "Balance Column" is the total.

Q. How do you explain that the first five shares amounted to \$50.00 and the next fifteen shares recorded at \$10,000.00. What is the reason for that?

A. That represents the difference in the cost of that stock to Mr. John S. Phipps.

Q. Now the last entry under date of July 31, 1933, seems to be an addition of \$5,000.00 to the account. Does that mean that these 20 shares are carried at the date of that last entry at a valuation of \$15,050.00, whereas previously they had been carried at \$10,050.00; can you explain what the reason or basis for that increase in the amount at which you previously carried that stock as an asset?

A. That represents an additional payment by Mr. Phipps to the Seminole Boat Company.

Q. And that is reflected there as an additional capital investment?

A. That is right.

Q. That does not represent an arbitrary inflation of that stock, but it represents a payment that was made?

A. An actual payment.

Q. This yellow sheet, Exhibit 5-E—I understood you to say that this does not reflect any of the payments for operating expenses?

A. That is correct.

Q. Have you made any tabulation of operating expenses?

A. No, sir.

Q. Are these operating expenses reflected from the books of the various interested stockholders?

A. They are included in their miscellaneous disbursements accounts.

Q. Do you have the books here showing the amounts of these for the various years?

A. I have miscellaneous disbursements accounts for the years that these ledgers cover.

Q. Well, Mr. Weiss, I will ask you this: have you the miscellaneous disbursements accounts for the years from 1930 to 1935, inclusive?

A. I don't think so. No, I wouldn't have them because they are loose-leaf ledger pages, and I have none of those miscellaneous disbursements accounts.

Q. And you didn't bring them down?

A. No.

Q. How did you happen to not bring those portions of the accounts with reference to the Seminole down?

A. I wasn't asked to.

Q. Could you make up a similar tabulation to 5-E, referring from the miscellaneous disbursements accounts, showing operation expenses paid by each of the stockholders during the years, say from 1930 to 1935, inclusive?

A. It could be done, but it would be a very lengthy and detailed task. The miscellaneous disbursements of Messrs. Phipps and Mrs. Guest include many, many items—all of their personal expenditures, some household expenditures, purchase of an automobile, and probably literally hundreds of items would be included in that.

Q. I don't think you quite understand me. I say would it be possible from those to pick out the items which had reference to the boat Seminole from those miscellaneous disbursements accounts?

A. Not from the ledger; not without an analysis of some other accounting records.

Q. Then, as I understand it, supposing Mrs. J. S. Phipps or Mr. H. C. Phipps, or either of them, made a trip on the Seminole in August, 1932, that, as I understand it, the payments that were made with respect to that trip would appear in this miscellaneous record account and it would be an extremely difficult matter, would it, to segregate those?

A. Very, very difficult.

Q. The items represented by the summary shown in Exhibit 5-E for the years 1933 and 1934, do the individual items making up these amounts appear from these ledger pages that have been filed in evidence here?

A. No, they do not.

Q. Where would you be able to obtain those items?

A. I would be able to obtain those from the papers attached to the original journal voucher from which this entry was posted.

Q. Now, Mr. Weiss, for the year 1933 I notice that there is \$851.08 posted against each one of the stockholders, making the total \$1702.16, and for the year 1934 it is \$1028.50 and \$1028.49, making a total of \$2056.99 for 1934. It would not be very much of a job to get up the individual detailed items with reference to these two relatively small accounts, would there?

A. I think it could be compiled.

Q. I wonder if you will do that and let us have it.

Mr. Underwood:

If your Honor please, I do not think the witness is the one to be asked to do that. I think the request should

come to me. It puts the witness on the spot, and I would like to have the purpose of that stated. It does not seem to me that the amounts of money spent cruising through these years have any bearing on this case.

Mr. Botts:

It is not cruising expense. The breakdown of these—

The Court:

You don't want this on the record?

Mr. Botts:

No; I don't think so.

(Legal discussion off the record.)

By Mr. Botts:

Q. I understand the Palm Beach Company has been merged into or absorbed by another company, and is not now actively functioning under that name, is that right?

A. That is right; that is what I understand.

Q. As I understand it, Mr. Weiss, Bessemer Properties has succeeded to the status formerly occupied by the Palm Beach Company.

A. Yes.

Q. Now then does the Bessemer Properties have any outstanding and unliquidated bills or claims against Palm Beach Company for advances made and not reimbursed by the Palm Beach Company?

A. Not that I know of.

Q. You don't know of any?

A. No.

Q. Well, does the Seminole Boat Company owe Bessemer Properties or Palm Beach Company any money on the books of those companies, or either of them?

A. I do not know that.

Q. You do not think the books here would show that?

A. I have never seen the books of the Seminole Boat Company.

Q. Well, doesn't Bessemer Properties have a ledger account on their books against Seminole Boat Company?

A. It does.

Q. You have seen that account?

A. I have seen statements—yes, I have seen that account; that is correct.

Q. That account is kept under your direction?

A. That is correct; it is kept in our office.

Q. You do not have that book with you?

A. I do not.

Mr. Botts:

Mr. Underwood, would you mind having the witness furnish us with a statement of the balances due the Bessemer Properties from Seminole Boat Company as shown by the books of Bessemer Properties.

Mr. Underwood:

Now?

Mr. Botts:

Yes; up to now.

Mr. Underwood:

I wouldn't mind. I object to going into the accounts following at least a year after the fire. What has transpired since then and what credit has been made following that time, has no bearing on the issues in this case. The question in this case—one of the questions in this case is whether this was a real corporation on the day of the fire.

Mr. Botts:

And that question may be largely affected by what has been done since. This corporation did not die as a corporation on that date, and how it functioned from that time on may be a very important question as to its corporate status, if any.

Mr. Matteson:

Of course Mr. Underwood has already put in the books of the Seminole Boat Company down to 1938, and they show an outstanding balance unpaid.

Mr. Underwood:

They were subpoenaed; you wanted them and I produced them. I do not intend to prove anything by them except that they are the books of the Seminole Boat Company. What has followed subsequent to the fire I think is wholly immaterial in this case.

Mr. Botts:

If counsel declines to furnish that information I see nothing to do but stand on the books of the Seminole Boat Company and the statement of Mr. John S. Phipps in that respect.

Mr. Underwood:

Pardon me. I didn't hear that.

(Thereupon the preceding statement of Mr. Botts was read by the reporter as above recorded.)

Mr. Underwood:

I will produce anything that the Court directs me to produce, if it is in existence and it is possible to get it, but I don't see the materiality of it.

Mr. Botts:

I have no other questions of this witness.

Mr. Matteson:

I have two or three.

By Mr. Matteson:

Q. Mr. Weiss, we have here an exhibit that has been offered as the books of the Seminole Boat Company, and I notice that on one of the pages here,—I am referring to Phipps' Exhibit Z, there is a statement on the voucher number 95 that it is to record the purchase of Mr. H. C. Phipps' one half interest in the Seminole Boat Company by Mrs. F. E. Guest on March 23, 1935. (Consideration \$5,000.00.) Now I think I noticed on Mrs. Guest's account here that the consideration was \$2500.00. Can you tell me which is correct?

A. If you show me those accounts I think I can. The books of Mr. Henry C. Phipps record the receipt of \$2500.00 for the sale of twenty shares of the Seminole Boat Company.

Q. Then \$2500.00 is the correct consideration, rather than that which appears on voucher number 95, which is part of Phipps' Exhibit Z?

A. According to the books of Mrs. Guest and Mr. Henry C. Phipps.

Q. Mr. Weiss, your name has come into this record before, I think, as the author of certain statements coming down to Palm Beach, which were the basis on which the—at least part of the basis on which the books of the Seminole Boat Company were made up. I take it that you do send down such statements from time to time, approving the accounts that have been forwarded to you, and directing the proper entries on the books that are kept at Palm Beach?

A. I send statements and acknowledge statements from Palm Beach, and I advise them of transactions that have occurred in our office.

Q. And the auditing of those accounts which come to New York or which come to your office, are audited there before the transactions are complete?

Mr. Underwood:

I object to that, your Honor, unless "Those accounts" is made more clear. Accounts of the Seminole Boat Company, or Palm Beach Company or what accounts?

Q. Well, I am taking for instance,—there is an exhibit here that has a statement attached—I will pass that for the minute while we are trying to find it. I refer now to these exhibits which have been marked by 5-G-1, 5-H-1, 5-I-1 and 5-F-1, and this exhibit 5-I-1, two, and three: Three is a statement headed "Seminole Boat Company in account with Palm Beach Company, May to November, 1935. I take it that that records an indebtedness of the Seminole Boat Company to the Palm Beach Company. And that indebtedness was paid by a check, which is Phipps' Exhibit 5-I-1 of the Bessemer Investment Company to the Palm Beach Company.

A. That is correct.

Q. And that was a payment which was charged in equal shares to Mrs. Guest and Mr. John S. Phipps; is that correct?

A. That is correct.

Q. In other words, that represents a payment by those individuals, which is the equivalent to their having drawn their personal checks for their respective amounts?

A. Yes, sir.

Q. In other words, to put it simply, Mr. John S. Phipps and Mrs. Amy Guest paid this account of the Seminole Boat Company in account with Palm Beach Company?

A. They paid it to the Palm Beach Company.

Q. And that represented no cash transaction as far as the Seminole Boat Company was concerned; in other

words, the money did not pass through the hands of the Seminole Boat Company?

A. The actual money did not,—was not, from this evidence, paid to the Seminole Boat Company.

Q. It was a debt of the Seminole Boat Company, paid directly by John S. Phipps and Mrs. Guest?

A. That is correct.

Q. And that is true also of the statement and payment represented by exhibits 5-F-1, 5-F-2 and 5-F-3, is it not?

A. Well, these are payments to the Palm Beach Company for the account of the Seminole Boat Company, by Mrs. Guest and Mr. John S. Phipps.

Q. Well, that statement is a statement of an indebtedness of the Seminole Boat Company to Palm Beach Company?

A. That is correct.

Q. And it is paid directly to the Palm Beach Company by Mr. Phipps and Mrs. Guest?

A. That is correct.

Q. And I take it that after that transaction was completed, there would be some sort of a statement prepared for the books of the Seminole Boat Company to record the transaction?

A. Yes, sir.

Q. And that is true in respect to the transactions represented by 5-F-1, 2 and 3 as well as 5-I-1, 2 and 3?

A. Yes, sir.

Q. And it is also true of these transactions which are represented by 5-G-1, 2 and 3, and 5-H-1, 2 and 3, is it not?

A. Those payments also represents payments made to Palm Beach Company for the account of Mrs. Guest and Mr. John S. Phipps for the account of the Seminole Boat Company.

Q. Well, they were payments of an indebtedness of the Seminole Boat Company to the Palm Beach Company, by Mr. John S. Phipps and Mrs. Guest, were they not?

A. Well, they were actually payments making up deficits of the Seminole Boat Company.

Q. Yes. But the payments were made direct by the individuals to the Palm Beach Company?

A. That is correct.

Q. Then subsequently to the completion of those transactions, a memorandum would be made up from which the appropriate entries would be made on the books of the Seminole Boat Company?

A. I presume that would be done in the Florida office.

Q. Are you the successor of Mr. LeCount?

A. Mr. LeCount worked in our office at the same time that I did.

Q. Well, was he your subordinate or your superior, or was there any distinction?

A. We don't have those fine distinctions.

Q. Well, this exhibit, Respondent's Exhibit 4-H, I believe it was testified by Mr. Anderson of Palm Beach that he received this statement from your office, and used that as a basis, at least partially, of his information for making up the books of the Seminole Boat Company. Is it a fact that such statements do originate in your office and are used for that purpose?

A. They do; they are used for reporting to the Palm Beach Company, Seminole Boat Company or other corporations, the status of their various accounts with the books of the corporations whose records are kept in our office.

Q. Well, a statement like this indicates that you have received information from the Palm Beach Company supporting these items, and that they have been properly audited, and that the transaction has been completed in New York; is that right?

A. This statement indicates that we have charged against this account these items, which may have come from the Palm Beach Company, or they may have come

from some other original source and have been accumulated in this statement.

Q. And it shows that they have been audited and approved in your office, does it?

A. All accounts passing through our office are scrutinized and approved, and we are governed to a very large extent upon classifications made at the original source of the transaction.

Q. And the supporting vouchers come to you along with the record of those transactions, do they not?

A. They usually do.

Q. And they are scrutinized and approved in your office?

A. That is right.

Q. Well now, what is the office in which you work in New York?

A. We have an office, the office of Bessemer Investment Company is at 15 Exchange Place, Jersey City; the Phipps family also have an office at 465 East 57th Street. I spent about two days a week at the Jersey office, the rest of the time in our New York office.

Q. And it is from that office that these statements emanate?

A. This statement came from the New York office.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Can you tell us, Mr. Weiss, why the reimbursements were made in that method?

A. What method is that, please?

Q. The one you have just referred to, from the Bessemer Investment Company to the Palm Beach Company.

A. They were made because the Bessemer Investment Company acts as a financing company for our other corporate organizations and for various members of the Phipps family.

Q. Let me put it this way: Does the Seminole Boat Company have a running account, or has it at any time had such an account, with the Bessemer Investment Company?

A. It has no account with the Bessemer Investment Company.

Q. Did the Palm Beach Company during these years have a running account with the Bessemer Investment Company?

A. No, the Palm Beach Company had a running account with Phipps Realty Company.

Q. With what company is the running account now?

A. Now the account is with Bessemer Investment Company, because Phipps Realty Company has been merged with Bessemer Investment Company.

Q. So that these payments were made in this method because the Seminole Boat Company had no running account with the company that in effect acted as banker?

A. That is correct.

Q. Now you were asked a question about what this \$5,000.00 figure represents on Exhibit 4-V; do you remember what you said as to that?

A. I think I said that that represented additional cost to Mr. John S. Phipps of that stock, or an additional payment by him on account of that stock.

Q. I show you Exhibit Y which contains journal voucher number 18, and ask you if that helps you to say what that \$5,000.00 is.

A. That's an assessment on the capital stock of the Seminole Boat Company.

Q. It is recorded there as an increase in the capital stock?

A. That's right.

Q. Now you spoke a while ago of the expenses of that 1929 cruise, which appear as a difference in the year 1929, on Exhibit 5-E; do you see that?

A. Yes.

Q. Now I show you a letter dated November 4, 1929, in Exhibit Y. Does that tell, or can you recall, what that \$3,000.00 figure is?

A. Yes, it represents the cost of a special trip of the Seminole Boat Company to New York and back, which was paid for by Mr. John S. Phipps.

Q. How do you account for that cost being in the books from which you took this data, 5-E, when you said the regular course was to put such expenses in the personal miscellaneous account?

A. I can't account for that.

Q. It might be a bookkeeper's mistake?

A. I think so; posted in the wrong account.

Mr. Underwood:

That is all.

The Court:

Did the discrepancy between the amount paid by the sister, in 1935, as between the books of the—her individual ledger and what was shown on the books of the Seminole Boat Company—

Mr. Underwood:

No, sir, I know of no such discrepancy.

Mr. Matteson:

The discrepancy that I noted.

The Court:

Where is that debit and credit entry?

Mr. Underwood:

There is the journal voucher, which shows 1224.90, and 1224.91.

The Court:

There was a discrepancy between this amount and the \$5,000.00 amount?

Mr. Matteson:

There was \$5,000.00 here and the \$2500.00 here; is that what you were referring to?

Mr. Underwood:

The discrepancy as to the price of the stock, was this; it was entered in journal voucher number 95 as \$5,000.00 paid; whereas actually the amount paid, according to the personal books, was \$2500.00, not \$5,000.00.

The Court:

But this amount here is the purchase price of the half interest—that is for the stock that she bought; is that correct or not?

Mr. Underwood:

No, sir, that \$12,000.00 figure represents the corporation's liability to Henry C. Phipps at the time he sold his stock to Mrs. Guest, and when Mrs. Guest paid \$2500.00 for that stock, she acquired the corporation's liability to Henry C. Phipps, as well as the piece of paper,—the stock certificate. That is what that shows. And this is simply a mistake, the bookkeeper has written down the purchase as \$5,000.00, and it was a half of \$5,000.00.

Mr. Matteson:

The \$12 000.00 as I understand it,—Mr. Underwood spoke of it as a debit, but every time the stockholders

made a payment to the corporation, to make up a deficit, it had to be placed somewhere in the books of the Seminole Boat Company as a credit to somebody, so they set up a page, crediting Henry C. Phipps,—crediting John S. Phipps, when those payments were made, they were credited on those pages; so that at the time of this transfer, as I gather from the records, there was that amount of a credit, in favor of H. C. Phipps on the books of the Seminole Boat Company, and that was simply transferred to a new page under the name of Mrs. Amy Guest; is that actually correct?

Mr. Underwood:

You and I don't see quite the same way, but almost. The books, at the time of the sale of the stock, showed that the corporation owed Henry C. Phipps \$12,000 odd dollars, and when Mrs. Guest bought Mr. Phipps' stock, they changed the books to show that the corporation owed Mrs. Guest that amount, instead of Mr. H. C. Phipps.

Mr. Matteson:

I object to the word, owed. * * *

By Mr. Matteson:

Q. You spoke of this \$5,000.00 as being an assessment on the stockholders of the Seminole Boat Company?

A. That is right.

Q. As a matter of fact you don't know yourself whether it was an assessment or a voluntary contribution; do you?

A. I would have to refer to the individual entry for that.

Q. The reason I say that, is that we have the minutes of the Seminole Boat Company, and there does not appear on them an assessment.

A. My recollection is that it was an assessment, and that each of the stockholders contributed \$5,000.00 to the corporation.

Q. You know that they contributed the \$5,000.00 to—

A. I do know that.

Q. But you don't know the circumstances?

A. No, I don't know that.

Mr. Matteson:

That is all.

(Thereupon the hearing was recessed until 9:30 o'clock a. m. of the following day, to-wit, Friday, May 19, 1939.)

May 19, 1939, 9:30 A. M.

Morning Session.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

The Court:

You may proceed, gentlemen.

Mr. Underwood:

If your Honor please, there are some exhibits which were offered for identification while the libelants' case was going on, and which I have not yet offered, and I would like to do so now.

The Court:

All right.

Mr. Underwood:

Exhibit "I" doesn't show that it was for identification, but according to my notes it was offered for identification.

It is a letter from Captain Pilkington to Mr. Simmon and Captain Pilkington identified it at the time he was on the stand: I offer that letter.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Admitted.

(Thereupon letter above referred to and previously marked "I" for identification was marked Respondents' Exhibit I.)

Mr. Underwood:
I also offer in evidence the sketch by Mr. Thompson, previously marked Respondents' Exhibit "P" for identification.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Let it be admitted.

(Thereupon the sketch above referred to was marked Respondents' Exhibit P.)

Mr. Underwood:
I also offer respondents' Exhibit M for identification, the sketch made, as I recall it, by Captain Patten.

Mr. Botts:

No objection.

Mr. Matteson:

No objection.

The Court:

Admitted.

(Thereupon the sketch above referred to was marked Respondents' Exhibit M.)

Mr. Underwood:

I also offer in evidence this page from the catalog previously marked Respondents' Exhibit L for identification.

Mr. Matteson:

No objection.

Mr. Botts:

No objection.

The Court:

Admitted.

(Thereupon page of catalog above referred to was marked Respondents' Exhibit L.)

Mr. Underwood:

I also offer this copy of a letter from Seminole Boat Company to Captain Pilkington previously marked respondents' Exhibit O for identification. On this there appears certain pencil writing written after the fire apparently and which I do not offer.

Mr. Botts:

We have no objection.

The Court:

Admitted.

(Copy of letter above referred to was marked Respondents' Exhibit "O".)

Mr. Underwood:

I also offer this little pamphlet which was previously marked Exhibit R for identification.

Mr. Botts:

No objection.

Mr. Matteson:

No objection.

The Court:

Admitted.

(Pamphlet above referred to was marked Respondents' Exhibit R.)

Mr. Underwood:

If your Honor please, I should like to recall Mr. Riley for examination on one point.

2770 Thereupon JAMES F. RILEY, JR., a witness previously called in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Direct Examination.

By Mr. Underwood:

Q. Since you last testified, Mr. Riley, have you read over the transcript of your testimony?

A. Yes, sir.

Q. Have you called my attention to some mistakes that appear therein?

A. Yes, sir.

Q. Do you remember last night that we discussed the matter and the stenographer read his notes back to us; do you remember that?

A. Yes.

Q. Now do you have before you some of such type-written pages?

A. Yes.

Q. Pages 1601 to 1607, inclusive?

A. Yes.

Q. Are there corrections you want to make in them?

A. Yes, sir. On page 1603.

Q. Tell us about that.

A. Under "Question" here is: "Now when you came to that sort of a slip, did you make any memorandum?" Another question under that same "Question" is: "You ordinarily made a memorandum on the slip as to who was to pay that, did you?" And the answer is "Yes, sir". That answer "Yes, sir" is to the first question and not to the second question. And it goes on to say: "I either made the charges on the statement, just who the charges would be made to, or in some instances I *billed* (that word should be "*pulled*") and collected the money from the people that the gas should be charged to".

Q. When the original transcript was written that word was written "*filled*", wasn't it?

A. Yes.

Q. And you called my attention to that?

you would usually make a memorandum on the slip as to how it was to be charged", and the answer is, "Yes, sir". Well I must have misunderstood the question, because the answer would be "Yes, sir" if the phrase "on the slip" was left out of the question.

Q. Now what is the fact, Mr. Riley, did you ever on any of these gasoline tickets yourself make any note as to the person or account to which they were to be charged?

A. No, sir.

Mr. Underwood:

That is all.

Mr. Botts:

No cross examination.

Mr. Matteson:

No questions.

Mr. Underwood:

Now, if your Honor please, I offer in evidence a statement which Mr. Matteson gave to me in advance of the trial which contains the names of 13 vessels for the loss of which or damages to which this suit is brought, and the names of the insurance companies which insured these vessels. At my request Mr. Matteson had this statement prepared and gave it to me as a list of the vessels that were insured and the names of the companies that insured them. I have added to the list in pencil marks at the lefthand side the amounts claimed in the libel by way of damages for these boats.

Mr. Matteson:

If your Honor please, I did furnish to Mr. Underwood the list at his request, reserving at the same time the question of relevancy or materiality, and I do object to the introduction of the list in the record on the ground that it is irrelevant and immaterial.

Mr. Botts:

I join in that same objection.

The Court:

What is the relevancy of it?

Mr. Underwood:

In the first place, if Your Honor please, I think the record should show the name of the real party in interest in each case. This is a statement showing that the underwriters have paid claims on these boats and they of course have become subrogated to any rights the owners may have had, and they are therefore the real parties in interest, and we are entitled to know that and have that made a part of the record.

The Court:

I shall reserve ruling on that.

Mr. Underwood:

If your Honor please, I would like to state one further ground upon which I make this offer; that is, as a part of my evidence to show bias and prejudice on the part of certain witnesses in this case, two witnesses called by the other side, have admitted that a substantial part of their livelihood comes from fees received from under-

writers for making marine surveys, and I want to show that a very substantial part of the amount claimed in this case is on behalf of the underwriters.

Mr. Botts:

Can't you mark it for identification for the time being subject to the ruling of the Court as to whether it will be admitted in evidence or not?

The Court:

Yes; that will be all right.

(Thereupon the list above referred to was marked Respondents' Exhibit 5-J for Identification.)

2774 Thereupon E. GEORGE BERNARD was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. E. George Bernard.

Q. Where do you live?

A. 6814 N. W. 11th Avenue; Miami.

Q. How long have you lived in Miami?

A. 14 years.

Q. What is your business?

A. Marine surveyor.

Q. How long have you been engaged in that business in Miami?

A. 14 years.

Q. You were Lloyd's sub-agent?

A. For a part of that time; for the last eight years; I don't know the exact date.

Q. What is Lloyd's whose sub-agent you are?

A. Lloyd's of London.

Q. What is it?

A. It is an organization for the classification of vessels and to take care of—Lloyd's agent proper takes care of Masters' or owners' interests or whatever may happen to come up in case of emergency or anything that you might happen to be detailed to by the Lloyd's Underwriters or board representative.

Q. That is an association of underwriters?

A. Yes, sir.

Q. You are a surveyor for the United States Salvage Association?

A. Yes, and their agent.

Q. What is the United States Salvage Association?

A. Representatives or surveyors for various bodies of underwriters.

Q. You are surveyor for the American Bureau of Shipping?

A. Yes, sir.

Q. You are correspondent of the Board of Underwriters of New York?

A. Yes, sir.

Q. What is the Board of Underwriters of New York?

A. They represent the—that is a board that represents the various underwriters that are members of that organization.

Q. All these underwriters we have talked about are underwriters on marine risks?

A. Yes, sir.

Q. Do you remember in March, 1935 when you went aboard the Houseboat Seminole and conducted a survey?

A. Yes, sir.

Q. Do you remember after the fire on the Seminole you had a conversation with Mr. Roy Hawkins?

A. Yes, sir.

Q. Isn't it a fact that on that occasion you refused employment by Mr. Hawkins because of your declaration or feeling that there was a conflict in interest between the parties Mr. Hawkins represented and the underwriters that you represent?

A. Yes, sir.

Mr. Botts:

Now, Mr. Witness, you saw me hold my hand up and you knew I was going to object to that question. You don't have to try to slip in an answer that way.

Mr. Underwood:

May I ask the Court to restrain Mr. Botts, and that he direct his statements to the Court and not give instructions to the witness. It is not for him to usurp the prerogative of the Court that way.

The Court:

I will instruct the witness. Mr. Witness, when any counsel indicate that they are going to object to a question, refrain from answering until after the Court rules on the objection.

Mr. Botts:

Now I move to strike the answer and I object to the question on two grounds; first, the question is entirely leading and, in the second place, the evidence is irrelevant and immaterial.

The Court:

The question is leading, but the damage is already done, and I don't think we can cure that. As to whether it is

material or relevant I cannot tell now. If it appears later on that it is immaterial or irrelevant, you may move to strike it, but I think that it possibly has materiality or relevancy, so I shall overrule the objection.

Mr. Botts:

Would you mind instructing counsel not to lead this witness?

Mr. Underwood:

If your Honor please, I have a right to lead this witness.

The Court:

Why?

Mr. Underwood:

I am laying the foundation to prove that he is hostile, and a witness who refused to work for us because of his interest on the other side.

The Court:

I think the leading questions should be confined until his hostility is established:

Mr. Underwood:

I think I have established it.

The Court:

I mean in the establishing of it (I am commenting on my ruling mainly); I will have to pass on that as a future question now. I see now that it is contended that he is at this time shown to be a hostile witness. I do not care to pass on that at this time, as to whether that has been established or not, but suppose we proceed without leading questions until you establish to the Court more satisfactorily that he is a hostile witness.

